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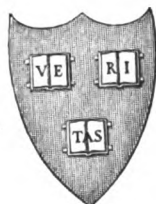
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Reports
IND
Index



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INDIA
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THE HAND-BOOK
OF
CRIMINAL RULINGS
BY
HEM CHANDRA SEN B. A.,
LATEIDIST. CIVIL JUDGE.
VOL. II.

Containing the Head Notes of the Criminal Rulings reported in the I. L. R., Calcutta, Bombay, Madras and Allahabad Series from 1896 to 1908, A. D., and Oudh Cases arranged in a chronological order, with Indexes.

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Cases.	How treated.	Where.	Cases.	How treated.	Where.
1 Cal. 207	Followed.	25 Cal. 711.	642	Referred to	19 All. 390
4 Cal. 172	Referred to	26 Cal. 188.	21 Cal. 29	Discussed	24 Cal. 55
5 Cal. 558	Referred to	19 All. 50.	121	Discussed	23 Cal. 502
6 Cal. 491	Distinguished.	25 Cal. 727.	958	Relied on	25 Cal. 561
8 Cal. 79	Referred to	19 All. 390.	727	Followed	23 Cal. 557
154	Referred to	19 All. 390.	915	Followed	25 Cal. 423
11 Cal. 635	Referred to	25 Cal. 413.	955	Dissented from	25 Cal. 711
737	Followed	23 Bom. 32.	979	Followed	22 Bom. 934
12 Cal. 58	Followed	18 All. 358.	22 Cal. 123	Referred to	21 Bom. 536
133	Followed	23 Bom. 32.	131	Followed	20 Bom. 543
13 Cal. 304	Referred to	18 All. 353.	„	Discussed	25 Cal. 233
14 Cal. 206	Distinguished	24 Cal. 686.	291	Followed	25 Cal. 291
276	Referred to	19 All. 50.	313	Referred to	21 All. 113
834	Referred to	25 Cal. 630.	341	Followed	20 Bom. 540
15 Cal. 564	Approved	23 Cal. 499.	573	Not followed	18 All. 358.
„	Followed	25 Cal. 278.	581	Distinguished	25 Cal. 483
565	Followed	21 Bom. 495.	586	Followed	26 Cal. 181
16 Cal. 80	Followed	25 Cal. 852.	817	Followed	23 Cal. 604
„	Followed	26 Cal. 188.	23 Cal. 55	Followed	23 Cal. 557
110	Referred to	19 All. 390.	„	Followed	25 Cal. 858
206	Followed	26 Cal. 574.	248	Referred	18 All. 353
612	Referred to	19 All. 390.	493	Followed	21 All. 107
730	Followed	23 Cal. 532.	495	Followed	19 All. 64
17 Cal. 562	Approved of	23 Cal. 499.	983	Followed	24 Cal. 286
„	Followed	25 Cal. 278.	„	Approved	24 Cal. 528
642	Followed	25 Cal. 711.	24 Cal. 686	Referred to	26 Cal. 574
862	Dissented from	23 Bom. 221.	25 Cal. 852	Followed	26 Cal. 188
„	Dissented from	21 Bom. 495.	3 All. 62	Referred to	18 All. 213
18 Cal. 518	Referred to	26 Cal. 158.	563	Referred to	19 All. 114
19 Cal. 35	Referred to	20 All. 55.	4 All. 148	Referred to	20 All. 459
127	Followed	25 Cal. 852.	198	Dissented from	25 Cal. 413
„	Followed	26 Cal. 188.	5 All. 226	Referred to	19 All. 50
380	Overruled	25 Cal. 512.	6 All. 26	Followed	23 Bom. 32
20 Cal. 349	Followed	23 Cal. 532.	42	Referred to	21 All. 159
520	Followed	23 Cal. 557.	„	Overruled	19 All. 305
„	Followed	24 Cal. 391.	45	Referred to	18 All. 358

Cases.	How treated.	Where.	Cases.	How treated	Where.
7 All. 362	Referred to	21 All. 111	25 Cal. 441	Followed	24 Cal. 686
8 All. 653	Referred to	19 All. 305	15 Bom. 369	Followed	25 Cal. 711
9 All. 52	Referred to	20 All. 339	16 Bom. 200	Referred to	18 All. 560
666	Distinguished	18 All. 221	661	Followed	23 Cal. 498
528	Referred to	20 All. 459	„	Followed	21 All. 107
10 All. 53	Referred to	25 Cal. 557	17 Bom. 73	Distinguished	23 Bom. 446
582	Followed	19 All. 121	18 Bom. 751	Referred to	18 All. 301
11 All. 308	Referred to	21 All. 25	21 Bom. 485	Followed	23 Bom. 221
12 All. 595	Followed	22 Bom. 235	22 Bom. 50	Referred to	20 All. 55
13 All. 345	Referred to	22 Mad. 148	766	Followed	22 Bom. 841
577	Distinguished	20 All. 501	1 Mad. 173	Not followed	18 All. 350
14 All. 49	Followed	23 Bom. 32	„ 309	Referred to	20 All. 120
242	Referred to	19 All. 302	7 Mad. 17	Referred to	21 All. 127
„	Dissented from	23 Cal. 502	71	Referred to	20 All. 440
386	Referred to	20 All. 529	557	Discussed	24 Cal. 528
502	Referred to	20 All. 529	9 Mad. 102	Referred to	18 All. 353
15 All. 143	Overruled	19 All. 50	201	Approved	25 Cal. 278
210	Referred to	21 All. 413	374	Referred to	18 All. 358
16 All. 207	Referred to	19 All. 390	11 Mad. 98	Followed	23 Bom. 32
17 All. 67	Distinguished	23 Bom. 430	12 Mad. 94	Approved	25 Cal. 333
18 All. 76	Referred to	20 All. 133	123	Referred to	21 All. 111
96	Approved	19 All. 73	148	Approved	25 Cal. 207
20 All. 459	Referred to	21 All. 122	451	Referred to	19 All. 200
1 Bom. 630	Referred to	25 Cal. 630	459	Followed	23 Cal. 604
7 Bom. 82	Referred to	20 All. 440	475	Distinguished	20 All. 504
180	Referred to	19 All. 50	14 Mad. 400	Followed	23 Cal. 420
3 Bom. 312	Followed	18 All. 350	17 Mad. 402	Referred to	18 All. 350
9 Bom. 288	Followed	22 Bom. 112	19 Mad. 464	Discussed	25 Cal. 426
10 Bom. 340	Referred to	25 Cal. 336	20 Mad. 3	Followed	25 Cal. 391
512	Followed	23 Cal. 604	235	Followed	20 All. 124
13 Bom. 515	Referred to	21 All. 113			
600	Referred to	21 Bom. 536			
„	Followed	18 All. 465			
14 Bom. 26	Followed	25 Cal. 413			
97	Dissented from	23 Cal. 867			
381	Approved	25 Cal. 333			

TABLE OF CASES.

THE FIRST IS THE INDEX OF THE LAW REPORTS AND THE SECOND AFTER DASH—IS OF THIS BOOK.

A.

				PAGE.
Abbas Penda v. Queen Empress	...	25	Cal.	736—388A.
Abdul Gafur v. Queen-Empress	...	23	"	896—375C.
Abdul Majid v. Emperor	...	33	"	1256—572D.
Abdul Razak v. Rahmutulla	...	27	All.	630—526B.
Abdul Samad v. Corporation	...	33	Cal.	287—569C.
Abhoy Charan Das v. Municipal Ward Inspector	...	25	"	625—386E.
Abu Bakar v. Municipality	...	29	Mad.	185—540B.
Adi Khan v. Alagan	...	21	"	237—389G.
Ajab Lal v. Emperor	...	32	Cal.	783—563C.
Ali Fakir v. Queen-Empress	...	25	"	230—382A.
Alingal v. Emperor	...	28	Mad.	454—537C.
Alraja in the matter of	...	30	"	222—575D.
Allapichai Ravathar v. Mohidin Bibi	...	20	"	3—355C.
Amulya Dhon v. Corporation	...	34	Cal.	30—573D.
Angada Ram Shaha v. Nemai Chand Shaha	...	23	"	867—375B.
Annakumaree Pillai v. Mathu	...	27	Mad.	551—534C.
Anna Ayyar v. Emperor	...	30	"	226—578A.
Anusoori Sangasi in the matter of	...	28	"	37—535B.
Atgaraswami v. Emperor	...	28	"	804—536B.
Arnachelam v. Chidan Buram	...	29	"	97—538C.
Ashutosh v. Emperor	...	33	Cal.	50—562A.
Aukhoy Chandra Hati v. Calcutta Municipality	...	24	"	360—378B.

B.

Babu Murtaza Husain v. King-Emperor	...	9	O. C.	69—581B.
Babu Ram v. Emperor	...	32	Cal.	775—563B.
Bahabal Shah v. Tarak Nath Chowdhry	...	24	"	691—380C.
Baij Nath v. King-Emperor	...	10	O. C.	287—584A.
Barka Chandra De v. Janmejey	...	32	Cal.	948—565B.
Balgangadher Tilak v. Queen-Empress	...	22	Bom.	528—391E.
Baili Pande v. Chitram	...	28	All.	625—531C.
Bal Thaser v. King-Emperor	...	33	Cal.	1032—572A.
Balwant v. Ki-hen	...	19	All.	114—366C.
Balwant Singh v. Umed Singh	...	18	"	203—362E.
Bandame v. Emperor	...	27	Mad.	237—533B.
Banu Singh u. Emperor	...	33	Cal.	1353—573B.
Barwar v. King-Emperor	...	10	O. C.	112—582C.

Basant Kuwar Ghattak v. Queen-Empress	...	26	Cal.	49—400A.
Benbow v. Benbow	...	24	"	634—380V.
Berkefield v. Emperor	...	34	"	73—574B.
Bhagwati Sanai v. Emperor	...	32	"	664—562C.
Bhagwan Singh v. Harmukh	...	29	All.	137—532E.
Bhakku v. Queen Empress	...	23	Cal.	522—374A.
Bhakta Vatsala v. Emperor	...	30	Mad.	103 544B.
Bhiku v. Zahuran	...	25	Cal.	291—283V.
Bhola Nath v. Wood	...	32	"	287—560V.
Bidya v. Jaglish	...	7	O. C.	334—577C.
Birendra Lal v. Emperor	...	32	Cal.	22—558B.
Biru Mandal v. Queen Empress	...	25	"	561—386D.
Brijbasi v. Queen-Empress	...	19	All.	74—365E.
Brown v. Prithiraj Mandal	...	25	Cal.	423—384B.
Bunwari Lal v. Hridai	...	31	"	552—561F.
Bindhai v. Emperor	...	33	"	292—570A.

C.

Cahoon v. Mathews	...	24	Cal.	494—379B.
Chaurasi v. Ram Shanker	...	28	All.	266—528C.
Chairman of the Serampur Municipality v. Inspector of Factories Hugli	...	25	Cal.	454—385B.
Chief Raim in the matter of	...	27	All.	623—526A.
Choa Lal Das v. Anant Persad Misser	...	25	Cal.	233—382B.
Chinna Thambi v. Salla	...	28	Mad.	310—537B.
Chote Lal v. Municipal Board	...	9	O. C.	29—580B.
Chundra Kumar Dey v. Ganesh Das Agarwala	...	25	Cal.	419—384A.
Chuni Lal v. Corporation	...	34	"	341—574D.
Corporation of Calcutta v. Eastern Mortgage Agency Co. Ltd	...	25	Cal.	483—385C.

D.

Dadan Gazi v. Emperor	...	33	Cal.	1023—571D.
Daitary Das v. Queen-Empress	...	25	"	557—386B.
Dasarathi Mandal v. Emperor	...	34	"	325—574C.
Dyanath Taluqdar v. Emperor	...	33	"	8—567B.
Debi Bux Suroff v. Jutmal Dungarwal	...	33	"	1282—573A.
Deo Nandan Pershad v. Emperor	...	33	"	649—571A.
Deputy Legal Remembrancer v. Ahmed Ali	...	25	"	333—388B.
Devidin v. Hara Prasad	...	11	O. C.	65—400E.
Dolgovind Chowdhry v. Dhana Khan	...	25	Cal.	559—386C.
Dorasami Naidu v. Emperor	...	30	Mad.	182—545A.
Dowlat Ram v. Emperor	...	32	Cal.	431—561B.
Driver v. Queen-Empress	...	25	"	798—388B.
Dukhi Kewat, in the matter of	...	28	All.	421—530D.
Dupeyron v. Driver	...	23	Cal.	495—373C.

Durga Charan Mali & Nobin Chander Seal	...	25	Cal.	274—382C.
Durga Prasad Kalwar v. Emperor	...	31	"	910—556C.
Dwarka v. Emperor	...	31	"	858—556B.

E.

Emman v. Emperor	...	31	Cal.	988—557A.
Emperor v. Abdul Hamid	...	32	"	759—562E.
" v. Abdullah	...	27	All.	499—525B.
" v. Abdul Latif	...	26	"	536—521C.
" v. Abdus Samad	...	28	"	210—528A.
" v. Abdul Sattar	...	27	"	567—525D.
" v. Abdus Sattar	...	28	"	464—531A.
" v. Ali Hasan	...	28	"	358—529D.
" v. Amrit Lal	...	29	"	25—532C.
" v. Arjan Pramanik	...	31	Cal.	664—554C.
" v. Azziz ud-din	...	27	All.	294—523A.
" v. Bahal	...	28	"	481—531B.
" v. Baldewa	...	28	"	372—529E.
" v. Balwant	...	27	"	293—522F.
" v. Bankat Ram Lachirah	...	28	Bom.	533—545E.
" v. Bazid	...	27	All.	298—523C.
" v. Babu Ram	...	26	"	509—520F.
" v. Beni Bahadur	...	26	"	380—520G.
" v. Bhoskar	...	30	Bom.	421—551C.
" v. Bindeshri Prasad	...	26	All.	512—521A.
" v. Bindeshari Singh	...	28	"	331—529C.
" v. Bishen Das	...	28	"	561—525C.
" v. Budhan	...	29	"	24—532B.
" v. Budhoobai	...	30	Bom.	126—550B.
" v. Chanda	...	28	All.	204—527D.
" v. Chedi	...	28	"	212—528B.
" Chellan	...	29	Mad.	91—538B.
" v. Chionna Kaliappa Gounden	...	29	"	126—539B.
" v. Chinnapayan	...	29	"	372—541D.
" v. Datto	...	30	Bom.	49—550A.
" v. Devi	...	28	All.	62—526J.
" v. Doraiswamy Mudali	...	30	Mad.	94—544A.
" v. Dost Muhammad	...	28	All.	98—526F.
" v. Dwarkadas	...	30	Bom.	992—551B.
" v. Dwarka Kurmi	...	28	All.	683—531E.
" v. Ganeshi Lal	...	27	"	258—522B.
" v. Ganga Prasad	...	27	"	26—522C.
" v. George Booth	...	26	"	211—519C.
" v. George Powel	...	27	"	397—524A.
" v. Ghulam Mustafa	...	26	"	371—520B.
" v. Gopal Barik	...	34	Cal.	42—574A.
" v. Hari Singh	...	28	All.	100—527A.
" v. Hussain	...	31	Bom.	348—551A.
" v. Ishri	...	29	All.	46—532D.
" v. Isau Mahomed	...	30	Bom.	218—553B.
" v. Jagan Nath	...	27	All.	468—524C.
" v. Jargardeo Pande	...	27	"	469—524D.
" v. Jagdeo Singh	...	28	"	629—531D.

Emperor	v. Janki Singh	...	8	O. C.	128—578C.
"	v. Jethalal	...	29	Bom.	449—549A.
"	v. Jounalagadda Vinkatrayudu	...	28	Mad.	565—537D.
"	v. Jumna Bai	...	28	All.	91—526E.
"	v. Juseb Ally	...	29	Bom.	386—548B.
"	v. Kandasami Gounden	...	30	Mad.	134—544C.
"	v. Karuppana	...	29	"	188—540D.
"	v. Kuna Sah	...	28	All.	89—526D.
"	v. Kushali	...	29	"	141—533A.
"	v. Kondiba	...	28	Bom.	412—545C.
"	v. Kothia	...	30	"	611—552B.
"	v. Lakhamshi	...	29	"	264—548A.
"	v. Luchman Singh	...	31	Cal.	710—555B.
"	v. Madho Dhobi	...	31	"	557—554B.
"	v. Magan Lal	...	28	Bom.	346—545B.
"	v. Main Jan	...	28	All.	313—529B.
"	v. Manikka Gramani	...	30	Mad.	228—576B.
"	v. Mayandi Konan	...	30	"	220—575B.
"	v. Meharban Husain	...	29	All.	7—532A.
"	v. Mohan	...	8	O. C.	91—578B.
"	v. Molla Fuzla Karim	...	33	Cal.	193—569B.
"	v. Mulai Singh	...	28	All.	402—530A.
"	v. MuthuKomaran	...	27	Mad.	525—534B.
"	v. Nadirsha	...	29	Bom.	85—547A.
"	v. Nagan Chheti	...	30	Mad.	221—575C.
"	v. Nageshwar	...	28	All.	404—530B.
"	v. Narbadeshwar	...	27	"	491—525A.
"	v. Palaniappavelam	...	29	Mad.	187—540C.
"	v. Prosanna Kumar Das	...	31	Cal.	1007—557C.
"	v. Raja Mustafa Ali Khan	...	8	O. C.	343—579B.
"	v. Raja Ram	...	26	All.	202—519B.
"	v. Ramaswamy	...	29	Mad.	192—540F.
"	v. Ram Baran Singh	...	28	All.	406—530C.
"	v. Ramchandra	...	31	Bom.	204—553A.
"	v. Ram Khilawan	...	28	All.	705—531F.
"	v. Ram Pratap	...	29	Bom.	423—548C.
"	v. Ram Sarup	...	28	All.	302—528E.
"	v. Rameshur	...	27	"	300—523D.
"	v. Ranjit	...	28	"	306—528F.
"	v. Robert Comley	...	29	Bom.	575—549B.
"	v. Robert Stewart	...	31	Cal.	1050—557D.
"	v. Salig Ram	...	28	All.	312—529A.
"	v. Samuel	...	30	Mad.	179—544E.
"	v. Sarada	...	32	Cal.	182—559D.
"	v. Shadi	...	26	All.	386—520D.
"	v. Sheo Lal	...	26	"	387—520E.
"	v. Shib Singh	...	27	"	292—522E.
"	v. Shidu	...	26	"	542—521D.
"	v. Sughar Singh	...	29	"	138—532F.
"	v. Sundar Sarup	...	26	"	514—521B.
"	v. Suraj Baksh Singh	...	10	O. C.	238—584A.
"	v. Tara Singh	...	27	All.	480—524E.
"	v. Tika	...	26	"	197—519A.

TABLE OF CASES.

Emperor v. Thakur Dyal	...	26	All.	344—520 A.
" v. Tota	...	26	"	170—519 D.
" v. Udmi	...	27	"	262—522 D.
" v. Wallace	...	29	Bom.	193—547 C.
" v. Walia Musaji	...	29	"	226—517 C.
Ekcowri Mukerjee v. Emperor	...	32	Cal.	178—559 C.

F

Farzand Ali v. Hanuman Prasad	...	18	All.	465—364 F.
Farzand Ali v. Hanuman Prasad	...	19	"	64—365 C.
Fattu v. Fattu	...	26	"	564—521 E.
Fool Kissory Dasi v. Nobin Chunder Bhunjo	...	23	Cal.	441—312 E.

G

Gantapalli Appaluma v. Gantapali Yellaya	...	20	Mad.	470—357 G.
Gauri Shanker v. Mata Prasad	...	20	All.	124—370 C.
Gendan Lal v. Abdul Aziz	...	27	"	302—523 E.
Girish Chander Roy v. Dwarkadas Agarwala	...	24	Cal.	528—370 D.
Girish Myti v. Queen-Empress	...	23	"	420—372 C.
Gokal v. King Emperor	...	10	O. C.	132—583 C.
Gomer Sirdar v. Queen-Empress	...	25	Cal.	863—399 F.
Gopal Lal Seal v. Manik Lal Seal	...	24	"	288—377 B.
Goswami Ranchor Lalji v. Sri Girdhariji	...	20	All.	120—370 R.
Gully v. Bakar Husain	...	28	"	268—528 D.
Gulraj Marwari v. Sheikh Bhato	...	32	Cal.	796—564 B.

H

Hafiz Ali v. King-Emperor	...	10	O. C.	196—583 D.
Haibat Khan v. Emperor	...	33	Cal.	30—567 C.
Haidar Ali v. Abru Mai	...	32	Cal.	756—562 D.
Hara Charan Mukerjee v. King-Emperor	...	32	Cal.	367—560 F.
Harbans v. King-Emperor	...	8	O. C.	395—579 C.
Hari Singh v. Jadu Nandan Singh	...	31	Cal.	542—554 A.
Hem Kumaree Dasi v. Queen-Empress	...	24	"	551—379 E.
Hira v. Emperor	...	31	"	1053—558 A.
Hyam v. Corporation of Calcutta	...	33	Cal.	646—570 C.

I

Imperatrix v. Appaji	...	21	Bom.	517—359 B.
" v. Jijibhai Govind	...	22	"	596—391 F.
" v. Juma	...	22	"	54—361 A.
" v. Keshav Lal	...	21	"	536—359 C.
" v. Narayan	...	22	"	438—391 C.
" v. Sudasiv	...	22	"	549—392 A.
" v. Vanmali	...	22	"	525—391 D.
Inayat Ali v. Mohar Singh	...	28	All.	142—527 B.
In re Bastoo Domaji	...	22	Bom.	717—393 B.
" Bholashanker	...	22	"	970—397 A.
" Chotalal Mathuradas	...	22	"	936—396 C.
" Devidin Durga Prasad	...	22	"	844—395 D.
" Harilal Buch	...	22	"	949—396 D.
" Hukumpuripava Gosain	...	22	"	715—393 A.
" Jagu Santram	...	22	"	709—392 C.
" Limlaji Tulsiram	...	22	"	766—394 D.
" Maharana Shri Jaswatsangji	...	22	"	988—397 C.

<i>In re</i> Jamna Das Harnarain	... 23	Bom.	54—397E.
„ Krishnaji P. Joglekar	... 23	„	223—397D.
„ M. tiram	... 22	„	859—395E.
„ Nahal Chand	... 22	„	742—393D.
„ Rahima Bhanji	... 22	„	848—395C.
„ Ranchoddas	... 22	„	317—391B.
„ Rangu	... 22	„	708—392B.
„ Rodrigues	... 20	„	502—358B.
„ Samsudin	... 22	„	711—392D.
„ Sulemanji Golam Husein	... 22	„	714—39E.
<i>In the Matter of</i> Ananda Chunder Singh v. Basumudh	24	Cal.	167—376E.
<i>In the Matter of an Attorney</i>	... 23	„	576—374C.
<i>In the Matter of</i> Jhojha Sing v. Queen-Empress	... 24	„	155—376E.
<i>In the Matter of</i> Rajendra Nath Mukerji	... 18	All.	174—362D.
<i>In the Matter of the Petition of</i> Barkat	... 19	„	200—366F.
<i>In the Matter of the Petition of</i> Benarsi Das	... 18	„	213—363A.
<i>In the Matter of the Petition of</i> Gader Sing	... 19	„	291—367B.
<i>In the Matter of the Petition of</i> Lalji	... 19	„	302—367C.
<i>In the Matter of the Petition of</i> Rudra Singh	... 18	„	380—364D.
<i>Indra Nath Banerji v. Queen-Empress</i>	... 25	Cal.	425—384C.
<i>Ismal Rowther v. Shunmagavelu Nadan</i>	... 29	Mad.	149—540A.

J

<i>Jagarnath Mandhata v. Queen-Empress</i>	... 24	Cal.	324—377E.
<i>Jhalan Jha v. Buchar Gope</i>	... 31	„	811—556A.
<i>Jhojha Singh v. Queen-Empress</i>	... 23	„	493—373B.
<i>Jogendranath Mukerjee v. Emperor</i>	... 33	„	1—561A.
<i>Jogendranath Mookerjee v. Sarat Chundra Banerjee</i>	... 32	Cal.	351—560E.
<i>Joharuddin Sarkar v. Emperor</i>	... 31	Cal.	715—555C.
<i>Jadubar Singh v. Sheo Saran Sing</i>	... 21	All.	26—399B.

K

<i>Kader Batcha v. Kader Batcha Rowthan</i>	... 29	Mad.	237—541B.
<i>Kailash Chandra Pal v. Kunja Behary Poddar</i>	... 24	Cal.	331—378C.
<i>Kali Charan Ghose v. Emperor</i>	... 33	„	1188—572C.
<i>Kali Kissen Tagore v. Ananda Chander Roy</i>	... 23	„	557—374B.
<i>Kali Kinkar v. Nitya Gopal</i>	... 32	„	469—561D.
<i>Kallu v. Kaunsilla</i>	... 26	All.	326—519D.
<i>Kamatchi Nath Chetty v. Emperor</i>	... 28	Mad.	308—537A.
<i>Kamta Nath v. Municipal Board</i>	... 28	All.	199—527C.
<i>Kanai Lal Gowala v. Queen-Empress</i>	... 24	Cal.	835—381B.
<i>Kanamba v. Manmatha Nath</i>	... 29	Mad.	122—539A.
<i>Kareyadan Pokkar v. Kyat Buran Kutti</i>	... 19	Mad.	461—354A.
<i>Karrulal Sajawal v. Shyam Lal</i>	... 32	Cal.	935—564D.
<i>Karuppana Nadan v. Chairman, Madura Municipality,</i>	21	Mad.	246—390A.
<i>Kashi Nath Bania v. Emperor</i>	... 32	Cal.	557—562A.
<i>Kashi Nath Naik v. Queen-Empress</i>	... 25	„	207—381D.
<i>Kazim Husain v. Shamsuddin</i>	... 9	O. C.	357—581C.
<i>Kesri v. Muhammed Buksh</i>	... 18	All.	221—363B.
<i>Khoda Buksh v. Bakeya Mundari</i>	... 32	Cal.	941—565A.
<i>Komal Chandra Pal v. Gur Chand Audhikary</i>	... 24	Cal.	286—377A.
<i>Korban v. Emperor</i>	... 32	„	444—561C.
<i>Kotamraju v. Emperor</i>	... 28	Mad.	90—535C.

Krishna Swami v. Venamama	...	30	Mad.	282—576D.
Kulala Kinkar v. Danish Mir	...	33	Cal.	33—568A.
Kuppamal, in the matter of	...	29	Mad.	375—541F.

L

Lal Mohan Chowdhry v. Hari Charan Das Bairagi	...	25	Cal.	637—387B.
Legal Remembrancer v. Bhairab Chunder Chakrabatty	25	„		727—357E.
Legal Remembrancer v. Chema Nasuya	...	25	„	413—383C.
Lutfur Rahman Nuskar v. Municipal Ward Inspector,	25	„		492—385D.

M

Malabar v. King Emperor	...	8	O. C.	245—578D.
Manavala Chetti v. Emperor	...	29	Mad.	569—543B.
Mani v. Bhagwanti	...	27	All.	415—524B.
Mangar Ram v. Behary	...	18	All.	358—364B.
Manjhit v. Manik Chand	...	19	„	73—365D.
Manmatha Nath v. Baroda Prasad	...	31	Cal.	645—555A.
Manockji v. The Bombay Tramway Co.	...	22	Bom.	739—393C.
Maqbul Ahmed v. King Emperor	...	9	O. C.	380—582A.
Mari Valayan v. The Emperor	...	30	Mad.	44—543C.
Martin, in the matter of	...	29	All.	296—523B.
Matadyal v. Queen-Empress	...	24	Cal.	756—380D.
Matareddi v. Mani Ram	...	19	All.	112—366B.
Mathra Persad v. Basant Lal	...	28	„	207—527E.
Mati Lal Premeukh v. Kanhai Lal	...	32	Cal.	969—65D.
Matak Dhari v. Hari	...	31	„	979—556E.
Meghai v. Sheobhik	...	18	All.	353—364A.
Meghu v. King-Emperor	...	7	O. C.	338—577D.
Methu Khan, in the matter of	...	27	All.	172—522A.
Md. Bhakku v. Queen-Empress	...	23	Cal.	532—374A.
Mohamed Abdul v. Pandurang	...	28	Mad.	255—536A.
Mohamed Fazil v. Abdul Sammed	...	10	O. C.	89—582B.
Mohidin v. Abdul Kadir	...	27	Mad.	238—533C.
Moti Thakur v. Deputy Conservator	...	33	Cal.	898—571C.
Mahomed Yusufuddin v. Queen-Empress	...	25	„	20—381C.
Mukti Bewa v. Jhotu Santra	...	24	„	53—376C.
Municipality of Bombay v. Shapurji Dinsha	...	20	Bom.	617—358E.
Muthia Chetti v. Emperor	...	29	Mad.	190—540C.
Muthia Chetti v. Emperor	...	30	„	224—575E.
Municipality of Bombay v. Sunderji	...	22	Bom.	980—397B.
Municipal Commissioner v. Mathura Bai	...	30	„	518—552A.

N

Nabi Baksh v. Queen-Empress	...	25	Cal.	416—383D.
Nabu Sardar v. Emperor	...	34	„	1—573C.
Narasimma Chariar v. Sinnavan	...	20	Mad.	365—356F.
Narayanawamy v. Emperor	...	30	„	567—543A.
Nawab Zulficar v. Zaiuab Begum	...	9	O. C.	49—581A.
Nirajan Sen v. Jogesh Chandra Bhattacharji	...	23	Cal.	983—376B.
Nityanand Sen v. Parash Nath	...	32	„	771—568A.
Nur Mahummed v. Ayesha Bibi	...	27	All.	483—529F.

P

Panch Kouri v. Queen-Empress	...	24	Cal.	686—380B.
Parama Siva v. Emperor	...	30	Mad.	481—543D.
Ponnusami, in the matter of	...	29	Mad.	517—542A.
Poorna Chander v. Corporation	...	33	Cal.	689—571B.

Paresh Nath v. Emperor	...	38	Cal.	295—570B.
Preonath Dey v. Gobardhan Malu	...	25	"	278—382E.
Protap Narain Sing v. Rajendra Narain Sing	...	24	"	55—376D.
Pryag Mahto v. Gobind Mahaton	...	32	"	602—562B.
Punardeo Narain Sing v. Ram Sarup Roy	...	25	"	858—399E.

Q

Quayam Ali v. Fayaz Ali	...	27	All.	359—523F.
Queen-Empress v. Abbas Ali	...	25	Cal.	512—385E.
" v. Abdul Kadar Sheriff Sahib	...	20	Mad.	8—355D.
" v. Ahmadi	...	20	All.	264—371H.
" Ahobalamatamjeer	...	22	Mad.	47—400D.
" v. Ajudhya	...	20	All.	339—372A.
" v. Amba Prasad	...	20	"	55—369C.
" v. Anga Valayan	...	22	Mad.	15—400C.
" v. Aru Mugain	...	20	"	189—356C.
" v. Aswiny Kumar Ghose	...	23	Cal.	421—372D.
" v. Ayyai Kunna Mudali	...	21	Mad.	293—390C.
" v. Babaji	...	22	Bom.	769—395A.
" v. Babaji Laxman	...	22	"	933—396A.
" v. Bai Baju	...	22	"	745—398E.
" v. Bala Miera	...	19	All.	311—367E.
" v. Bal Gangadhar Tilak	...	22	Bom.	112—361B.
" v. Behari Lal	...	20	All.	534—398F.
" v. Beni Madhab Chakravarty	...	25	Cal.	275—382D.
" v. Bhadu	...	19	All.	119—366D.
" v. Bharat Sing	...	1	O. C.	84—388K.
" v. Bhashyam Chetti	...	19	Mad.	209—352A.
" v. Bhup Sing	...	1	O. C.	85—389A.
" v. Billar	...	20	All.	160—371C.
" v. Bisram Babaji	...	21	Bom.	495—60A.
" v. Brij Narain Man	...	20	All.	529—398E.
" v. Chidda	...	20	"	40—369B.
" v. Chittar	...	20	"	389—372B.
" v. Chunni	...	18	"	497—365A.
" v. Dada Hanwant	...	20	Bom.	794—358F.
" v. Dal Sing	...	20	All.	166—371D.
" v. Dalip	...	18	"	246—363C.
" v. Dhanjibhai Edalji	...	20	Bom.	348—358H.
" v. Donaghue	...	22	Mad.	1—400B.
" v. Doma Baidya	...	19	"	483—355A.
" v. Fateh Bahadur	...	20	All.	181—371E.
" v. Fattah Chand	...	24	Cal.	499—379C.
" v. Gobinda	...	20	All.	159—371B.
" v. Ganesh	...	23	Bom.	50—397E.
" v. Gopal Gonadan	...	19	Mad.	269—353F.
" v. Hama	...	22	Bom.	760—394C.
" v. Har Chandra Choudhury	...	25	Cal.	440—385A.
" v. Himai	...	20	All.	158—371A.
" v. Ishri	...	20	"	1—369A.
" v. Jabanulla	...	23	Cal.	975—376A.
" v. Jasoda Nand	...	20	All.	501—398D.
" v. Jogendra Nath Mukerji	...	24	Cal.	320—377D.
" v. Kader Nayar Shah	...	23	"	604—374D.
" v. Kalu Dossan	...	22	Bom.	759—394B.
" v. Kalyan	...	19	Mad.	310—353A.

Queen Empress v. Kalyani	... 19	Mad.	356—353D.
" A. Kanappapillai	... 20	"	387—367A.
" v. Kandappa Goundan	... 20	"	88—363B.
" v. Karuppa Udayan	... 20	"	87—356A.
" v. Kattayan	... 20	"	235—356D.
" v. Kayamulla Mandal	... 24	Cal.	429—378E.
" v. Khandu Singh	... 22	Bom.	768—394E.
" v. Krishtappa	... 20	Mad.	31—355G.
" v. Kushali Ram	... 18	All.	158—362C.
" v. Kutti Alli	... 20	Mad.	16—355F.
" v. Lachmi Kant	... 18	All.	301—363D.
" v. Lakshmi Navakan	... 19	Mad.	238—352B.
" v. Lalta Prasad	... 20	All.	186—371F.
" v. Latif Khan	... 20	Bom.	394—358A.
" v. Mahalingam Servai	... 21	Mad.	63—389B.
" v. Maiku Lal	... 20	All.	138—370D.
" v. Makunda	... 20	"	70—369D.
" v. Makundram	... 25	Cal.	432—384D.
" v. Man Mohan Lal	... 21	All.	86—399C.
" v. Manick Chandra Sarkar	... 24	Cal.	492—379A.
" v. Manikam	... 19	Mad.	268—352E.
" v. Mannu	... 19	All.	390—367F.
" v. Mata Prasad	... 19	"	249—367A.
" v. Mirchia	... 18	"	364—364C.
" v. Motha	... 20	Mad.	339—356E.
" v. Muhammad Ismail Khan	... 20	All.	151—370F.
" v. Muhammad Shah Khan	... 20	"	307—371I.
" v. Mattaya	... 20	Mad.	457—357F.
" v. Nageshappa	... 20	Bom.	543—358D.
" v. Nand Kishore	... 19	All.	305—367D.
" v. Nanjuda Ram	... 20	Mad.	79—355H.
" v. Nazla Kala	... 22	Bom.	235—362B.
" v. Nihal Chand	... 20	All.	440—398B.
" v. Pandeh Bhat	... 19	"	506—368C.
" v. Paul	... 20	Mad.	12—355E.
" v. Poomaala Udayan	... 21	"	296—390D.
" v. Prag Dat	... 20	All.	459—398C.
" v. Pratap Chander Ghose	... 25	Cal.	852—399D.
" v. Pukot Kota	... 19	Mad.	349—353B.
" v. Rahim Baksh	... 20	All.	206—371G.
" v. Ram Baran Singh	... 21	"	25—399A.
" v. Ram Chandra Narayan	... 22	Bom.	152—362A.
" v. Ram Dei	... 18	All.	350—363E.
" v. Ram Pal	... 20	"	95—369E.
" v. Ram Sundar	... 19	"	109—366A.
" v. Rama Lingam	... 20	Mad.	445—357E.
" v. Ram Lingam	... 21	"	430—391A.
" v. Rama Sami	... 21	Mad.	114—389E.
" v. Raman	... 21	Mad.	83—389D.
" v. Raru Nayar	... 19	"	482—354C.
" v. Rayapadayachi	... 19	"	240—352C.
" v. Ross	... 22	Bom.	746—394A.
" v. Sakarjan Mahomed	... 22	"	984—396B.
" v. Saminadha Pillai	... 19	Mad.	464—354B.
" v. Schade	... 19	All.	465—368A.

Queen Empress v. Shakir Alli	...	19	All.	502—368B.
" v. Sheshadri Ayyanger	...	20	Mad.	383—356G.
" v. Sinnai Goundan	...	20	"	383—357B.
" v. Srinivaslu Naidu	...	21	"	124—389F.
" v. Sri Ahobalamatam jeer	...	22	"	47—400D.
" v. Subha Naik	...	21	"	249—390B.
" v. Subbanna	...	19	"	241—352D.
" v. Subhan	...	18	All.	395—364E.
" v. Subramanian	...	20	Mad.	1—355B.
" v. Subramaniam Ayyar	...	20	"	385—356H.
" v. Taiya	...	20	Bom.	795—358G.
" v. Tamij-ud-din	...	24	Cal.	757—380E.
" v. Tribuny Sahai	...	20	All.	426—398A.
" v. Tiruchittamtala Pathan	...	21	Mad.	78—389C.
" v. Tiruvengada Mudali	...	21	"	428—390E.
" v. Tulsa	...	20	All.	143—370E.
" v. Vasudevaya	...	19	Mad.	354—353C.
" v. Venkataram Jetti	...	20	"	414—357D.
" v. Virappa Cheti	...	20	"	433—357C.
" v. Virasami	...	19	Mad.	375—353E.
" v. Visram Babaji	...	21	Bom.	495—359A.
" v. Wara Bai	...	20	"	540—358C.
" v. William Plummer	...	22	"	841—395B.
" v. Yusuf	...	20	All.	107—370A.
" v. Zavar Husen	...	20	"	155—370G.

R

Radhabullav v. Benode Behary	...	30	Cal.	449—456A.
Radha Krishna v. Kissonlal	...	26	BOM.	289—476B.
Radha Ramon Ghose v. Bali Ram Ram	...	32	Cal.	249—560B.
Raghunatha v. Emperor	...	26	Mad.	130—484B.
Raghubar Dayal v. King-Emperor	...	6	O. C.	159—515B.
Raghubar Dyal v. King-Emperor	...	10	O. C.	168—583O.
Raghunandan Pershad and others v. Emperor	...	32	Cal.	80—559A.
Raghu Sing v. Abdul Wahab	...	23	Cal.	442—373A.
Rahimuddi v. Asgar Ali	...	27	Cal.	990—434A.
Rai Ishri v. Queen-Empress	...	23	Cal.	621—375A.
Raj Kishore v. Joy Krishna	...	28	"	363—439C.
Raj Kumari v. Bama	...	23	"	610—374E.
Raja Bhagwan Bnsh v. King-Emperor	...	3	O. C.	418—580A.
Ram Adhin v. Durga	...	4	O. C.	96—507E.
Ram Adhin v. Queen-Empress	...	1	O. C.	4—505A.
Ramasamy Chetti, in the matter of	...	27	Mad.	510—534A.
Rama Swami Gounden v. Emperor	...	27	"	271—533D.
Ram Chandra v. Jitendra	...	25	Cal.	434—384E.
Ram Chandra v. Nobin	...	25	"	630—387A.
Ram Gopal Daw v. Emperor	...	32	Cal.	793—564A.
Ram Krishna Biswas v. Mohendra	...	27	"	565—426C.
Ram Lochan v. Queen-Empress	...	29	"	214—444D.
Ram Narain v. Queen-Empress	...	1	O. C.	1—504C.
Ram Narain v. Queen-Empress	...	1	O. C.	1—388C.
Ram Nath Chowdhry v. Emperor	...	34	Cal.	897—588C.
Ram Sarup v. King-Emperor	...	4	O. C.	127—508B.
Ramanadhan v. Murugappa	...	24	Mad.	45—407A.
Ramadhia v. Queen-Empress	...	1	O. C.	4—388D.

Ramakrishna v. Emperor	...	26	Mad.	598—490B.
Raman Singh v. Queen-Empress	...	28	Cal.	411—440A.
Ramasory v. Queen-Empress	...	27	"	452—425B.
Ramzan v. Ram Khelawan	...	24	"	316—377C.
Ramzan Ali v. Janardhan	...	30	"	110—453C.
Ranga Ayyar v. Emperor	...	29	Mad.	331—541C.
Rangacharlu v. Emperor	...	29	"	236—541A.
Ranga Sami Goundan v. Emperor	...	30	"	223—576C.
Rasul Bibi v. Ahamad Musaji	...	34	Cal.	347—575A.
Ratan Moni Dey v. King-Empperor	...	32	"	292—560D.
Ratigadu v. Konda	...	24	Mad.	271—409C.
Rayan Kutti v. Emperor	...	26	"	640—491A.
Reasut v. Courtney	...	28	Cal.	423—440C.
Regula Bheemappa v. Emperor	...	26	Mad.	249—486A.
Reilly v. The King-Empperor	...	28	Cal.	434—440D.
Rev. Father Causavel v. Rev. Suarez	...	12	Mad.	273—353G.
Ruppel v. Ponnusami	...	22	Mad.	488—402A.

S

Sada Nanda Pal v. Emperor	...	32	Cal.	550—561E.
Sadhu Lal v. Ram Churn	...	30	"	394—454C.
Safdar Hussain, in the matter of the Complaint of	...	25	All.	315—496D.
Salig Ram v. Ramji Lal	...	28	All.	554—593A.
Samaidin v. King-Empperor	...	5	O. C.	246—512C.
Sami Ayya v. Emperor	...	26	Mad.	478—459A.
Samiruddin Sarker v. Nibaran Chandra Ghose	...	31	Cal.	928—556D.
Sangilia Pillai v. District Magistrate.	...	25	Mad.	659—479D.
Sant Bukeb Singh v. King Emperor	...	10	O. O.	165—583B.
Sarat Chandra Ghose v. King-Empperor	...	32	Cal.	247—560A.
Sarat Roy v. Bepin Roy	...	29	Cal.	369—447A.
Surbdawan Singh v. King-Empperor	...	7	O. C.	208—577B.
Satis Bose v. Queen Empress	...	27	Cal.	172—421C.
Satishchander Roy v. Jodunandan Singh	...	26	"	748—418B.
Satnarayan Tewari v. Emperor	...	32	Cal.	1085—566A.
Sevakolandai v. Ammayan	...	26	Mad.	394—491D.
Sevakolandai v. Ammayan	...	26	Mad.	396—486B.
Shaik Babu v. Emperor	...	33	Cal.	1036—572B.
Shamal Dhone Butt v. Corporation of Calcutta	...	34	"	30—573D.
Shama Charan v. Kasi	...	23	Cal.	971—375D.
Shama Charan v. Kalu	...	24	"	344—518A.
Shamsuddin v. Emperor	...	30	"	107—453B.
Shanker v. Queen Empress	...	3	O. C.	72—506B.
Shanker Bal Krishna v. Emperor	...	32	Cal.	73—558C.
Shanker Dyal v. Venally	...	19	All.	121—356E.
Shayama Nund Das Pabharaj v. Emperor	...	31	Cal.	990—557B.
Shree Bhajan v. Mosavi	...	27	"	983—438C.
Shree Din v. King-Empperor	...	6	O. C.	262—516D.
Shree Prakash v. W. D. Rawlins	...	28	Cal.	594—442B.
Shooraj Roy v. Chatter Roy	...	32	"	966—565C.
Shingaraju v. Nagabhusanam	...	26	Mad.	464—487C.
Shinderji v. Maylon	...	26	Cal.	874—419C.
Shriman Kumara Tirumalraja v. Sowcar Lodd	...	29	Mad.	561—542C.
Shrinidhi	...	6	O. C.	204—516B.
Shri Kishen v. Emperor	...	24	Cal.	395—378D.
Shri Nath v. Ainadi	...	24	Cal.	395—378D.

Subal v. Ram.	...	25	Cal.	628—386F.
Subba v. The Crown	...	21	O. C.	307—505E.
Subba Reddi v. Munshoor	...	24	Mad.	81—407C.
Subudhi v. Balarama	...	26	"	481—489C.
Sukru Dosadh v. Ram Pergash	...	30	Cal.	443—455D.
Sundar v. Sital	...	28	"	217—437A.
Sundar Majhi v. Emperor	...	30	"	1084—502A.
Suppavevan v. Emperor	...	29	Mad.	89—538A.
Surat Lal v. Emperor	...	29	Cal.	211—444C.
Surendra Sarma v. Rai Mohan	...	30	"	690—499D.
Suri Venkatappyya Sastri v. Madala Venkanna	...	29	Mad.	531—594D.
Surju v. Queen-Empress	...	25	Cal.	555—386A.
Surjya Kanta v. Hem Chowdhry	...	30	"	508—499A.
Surja Kanta v. Emperor	...	31	"	350—503D.
Suryanarayana Row v. Emperor	...	29	Mad.	100—538D.
T				
Tafazul v. Queen-Emperor	...	26	Cal.	630—417D.
Taju v. Queen-Empress	...	25	"	711—387D.
Tangi v. Hall	...	23	Mad.	203—408C.
Tara Chanda Singh v. Emperor	...	32	Cal.	1069—565E.
Tarapada Biswas v. Nural Huq	...	32	"	1093—566C.
Tata Prosad v. Emperor	...	30	Cal.	910—501A.
Thakur Das v. Alhar Chandra Missri	...	32	"	425—561A.
Thandraya Mudali v. Emperor	...	26	Mad.	38—481B.
The Govt. of Bengal v. Senayat Ali	...	27	Cal.	317—423A.
Thomas v. Emperor	...	29	Mad.	558—542B.
Tilak Chandra v. Biasagomoff	...	23	Cal.	502—373E.
Tulsi v. Sweeney	...	24	"	881—381A.
U				
Uma Charan v. Emperor	...	29	Cal.	244—445C.
Umatal Fatima v. Nimai Charan Banerji	...	32	"	154—559B.
Umis Chander v. Queen-Emperor	...	26	"	571—416F.
Upendra Nath v. Khitish	...	23	"	499—373D.
V				
V. Shanmugam v. Pennappa	...	26	Mad.	137—484C.
Valia Ambu Poduval v. Emperor	...	30	Mad.	136—544D.
Vemuri Seshanna	...	26	Mad.	421—486C.
Venkata Krishna v. Chimpru	...	22	Mad.	246—401E.
Venkatessa Ayyangar	...	26	Mad.	193—485E.
Venket Rama Chetty v. Emperor	...	28	"	17—535A.
Vijiaraghav v. Emperor	...	26	Mad.	554—489D.
Vythianada Gambiran v. Mayandi Chetty	...	29	"	313—541E.
W				
W. R. Fink v. Corporation	...	30	Cal.	721—500B.
Wajid Ali v. Abdul Gafur	...	5	O. C.	1—509B.
Wahed Ali v. Emperor	...	32	Cal.	109—566B.
Woolfun Bibi v. Jesaral Sheikh	...	27	Cal.	262—422D.
Y				
Yakub Ali v. Lethu	...	30	"	288—454A.
Yasin v. King-Emperor	...	28	"	689—443A.
Yusuf Mahomed v. Bansidhar	...	25	"	639—387C.
Z				
Zaffer Nawab v. Emperor	...	32	Cal.	930—564C.
Zamunia v. Ram Tahal	...	27	"	370—424C.

[19 Mad. page 209.]

(A.) QUEEN-EMPRESS v. BHASHYAM
CHETTI.*Madras city Police Act—Act III of
1888, sections 42, 45, 47.*

Where a Magistrate has recorded that an accused person had pleaded guilty, an affidavit to the contrary sworn to by the accused is not admissible in evidence on revision by the High Court. In Madras City Police Act III of 1888, section 47, the words "all or any of the other articles seized" include money or securities for money seized by the police under section 42. The Magistrate not bound to hold any enquiry as to whether the money and other things seized were used or intended to be used for the purpose of gaming.

[19 Mad. page 238.]

(B) QUEEN-EMPRESS v. LAKSHMI
NAYAKAN.*Cattle Trespass Act I of 1871, sections
22, 25—No appeal—Criminal
Procedure Code, section 404.*

There being no appeal from a conviction under Cattle Trespass Act, the High Court refused to revise the proceedings of the Lower Court under sections 435, 438, Criminal Procedure Code, since there being evidence to support the conviction, to adopt such a course would be to substantially allow an appeal. Imprisonment cannot be inflicted in default of payment of the compensation awarded under the Cattle Trespass Act.

[19 Mad. page 240.]

(C.) QUEEN-EMPRESS v. RAYAPADAY-
ACHI.*Penal Code, section 448—Criminal
Trespass—Intent.*

Although a trespasser knows that his act, if discovered, will be likely to cause annoyance, it does not follow that he does the act with that intent.

[19 Mad. page 241.]

(D.) QUEEN-EMPRESS v. SUBBANNA.

*Madras District Municipalities Act—
Act IV of 1884, section 172—Criminal
Procedure Code, section 433.*

By section 170, Madras District Municipalities Act IV of 1884, it is provided "the external roofs, verandahs, pandals and walls of buildings erected or renewed after the coming into operation of this Act shall not be made of grass leaves or other such inflammable materials except with the written permission of the Municipal Council."

Held, that the word "renewed" includes repairing.

[19 Mad. page 263.]

(E.) QUEEN-EMPRESS v. MANIKAM.

*Criminal Procedure Code (Act X of
1888) section 555—Magistrate per-
sonally interested—Magistrate giv-
ing evidence before himself.*

Where a Magistrate, in whose Court complaint of rioting and mischief had been filed, made a personal inspection of the *locus in qua*.

Held, that by so doing he had made himself a witness in the case and had thereby rendered himself incompetent to try it.

Held, further that where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused.

19 Mad. page 269.

(F.) QUEEN-EMPRESS v. GOPAL
GOUNDAN.*Criminal Procedure Code—Act X of
1883, section 260d, 355. 537—**Record in a summons case.*

A Native Sub-Magistrate, who had not been authorized to take down evidence in English recorded the memorandum of the substance of the evidence taken under section 355 in that language.

Held, that there was no provision in the Code prohibiting this procedure, and that, at any rate it was merely an irregularity which would not vitiate the trial.

19 Mad. page 273.

(G.) REV. FATHER CAUSSAVELL v. REV.
SAUREZ.*Indian Christian Marriage Act—Act
XV of 1872, sections 5 40, 12,
13, 38, 68, 70 and 73.*

S., an Episcopally ordained Priest of the Syrian Church, under the jurisdiction of the Patriarch Antioch, solemnized two marriages according to Roman ritual without publishing or causing to be affixed the notices of such marriages required by Part III of the Act. It was proved that S. used the Roman ritual with the sanction of his Bishop, who was appointed by the Patriarch.

Held, that S., having received episcopal ordination, was authorized to solemnize the marriages according to the rules, rites, ceremonies and customs of his church, and that it was not shown that a marriage solemnized with the Roman ritual under the sanction of Bishop of the Syrian Church was not solemnized according to the rules, rites, ceremonies and customs of the Syrian Church.

Held, further that Part III of the Act only applies to ministers of religion licensed under the Act and not to Episcopally ordained persons.

19 Mad. page 310.

QUEEN-EMPRESS v. KALIAN.

Penal Code (Act XLV of 1860) section 224—Escape from lawful custody—Salt Act (Madras)—Act IV of 1889, sections 46, 47.

The Madras Salt Act, 1889, only authorises searches for contraband salt and arrests of the parties concerned in the keeping of such salt to be made by officers of the Salt Department without search warrant in cases where the delay in obtaining such search warrant will prevent the discovery of such contraband salt.

Held, that where the circumstances did not justify the officer in believing that the delay in obtaining a search warrant would prevent the discovery of contraband salt, he had no power to search or arrest persons without such warrant, and the escape by the persons so arrested from custody was no offence within the meaning of section 224, Indian Penal Code.

19 Mad. page 349.

(B.) QUEEN-EMPRESS v. PUKOT KOTU.

Abkari Act—Act I of 1886 (Madras) sections 31, 36—Penal Code, sections 99, 147 and 353.

A Sub-Inspector of Salt and Abkari attempted without a search warrant, to enter a house in search of property, the illicit possession of which is an offence under the Madras Abkari Act and was obstructed and resisted.

Held, that having regard to section 99 of the Penal Code, even though the Sub-Inspector was not strictly justified in searching a house without a warrant, the persons obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of their obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice.

19 Mad. page 354.

(C.) QUEEN-EMPRESS v. VASUDEV. AYYA.

Criminal Procedure Code, (Act X of 1882) section 419—Presented.

The Criminal Procedure Code, section 419, requires that a criminal appeal shall be delivered to the proper officer of the Court either by the appellant or his pleader. Where a petition of appeal was not presented to the Court, but was deposited in a petition box kept for the convenience of parties within the Court precincts and intended for the deposit of papers for the Court.

Held, that it had not been presented and was rightly returned for legal presentation.

19 Mad. page 356.

[D.] QUEEN-EMPRESS v. KALIYANI.

Penal Code (Act XLV of 1860), section 304—Act done with the knowledge that death would be a probable result.

Where the prisoner by gripping and squeezing the testicles of deceased reduced them to a supple condition thereby causing an injury which resulted in death due to the shock so inflicted on the nervous system.

Held, PER DAVIES J.—That the death was an unforeseen result for which prisoner could not be held liable, and that she ought to be convicted under section 323, Penal Code.

Held, PER SUBRAMANIA AYEAR AND BENSON, J.—That death was a probable consequence of the prisoner's act, and that she was guilty under section 304, Penal Code, of culpable homicide not amounting to murder.

19 Mad. page 375.

(E.) QUEEN-EMPRESS v. VIRASAMI.

Witness—Committed for trial for offence under section 193, Penal Code—Criminal Procedure Code, sections 282, 428, 477, 521a—Incompetence of Juror—New trial—Application for transfer.

On the trial of certain prisoners on a charge of dacoity, a witness gave false evidence and was committed under section 477, Criminal Procedure Code, for trial on a charge under section 193, Penal Code. After such committal it was discovered that one of the jurors empanelled in the dacoity case was deaf and partly blind; and thereupon under section 282, Criminal Procedure Code the case was tried *denovo* before a competent jury. The trial of the charge under section 193, Penal Code, was fixed for the November sessions, but on the 17th October, 1896, on prisoner's application the trial was adjourned to 2nd December, 1895. On 20th November the prisoner's vakil put in a petition alleging that he had moved the High Court for a transfer of the case. On this petition coming on for disposal, the prisoner's vakil moved orally for an adjournment under section 526-A, Criminal Procedure Code, which was refused. On the 30th November, the prisoner's vakil put in a petition in which he prayed for an adjournment under section 526-A. This petition was refused and the trial began on 2nd December and judgment was written and pronounced on 5th December. In the meantime application had been made to the High Court for a transfer and that petition was disposed of on 4th December granting the transfer prayed, the High Court apparently being not aware that the trial was at that time proceeding before the Sessions Court. On 5th December after the trial in the Sessions Court was concluded and

Before judgment was delivered, a fresh petition was presented for an adjournment on the ground that a telegram had been received from the High Court transferring the case, but the Sessions Judge refused to act upon it in the absence of orders from the High Court and delivered judgment convicting the prisoner. During the trial before the Sessions Court the prisoner applied for an adjournment on the ground that two witnesses for the defence were absent, one being too ill to attend, the other not having been served with the summonses, but the Sessions Judge considering the application was made merely for purposes of delay and to defeat the ends of justice and that their evidence would not be material, refused to adjourn for their evidence to be recorded.

Held, first that the fact that the trial for dacoity had to be commenced *de novo* did not exonerate the prisoner from the obligation to speak the truth imposed by section 14 of the Indian Oaths Act X of 1873 in the first trial, which became abortive owing to the incompetency of one of the jurors. Secondly that section 526-A, Criminal Procedure Code, is imperative, but that the object of sections 344 and 526 when read together is merely to give a party reasonable time to move the High Court and obtain its orders and that in the present case there was sufficient time for such application to have been made, if due diligence had been observed. Thirdly that the order for transfer made on 4th December, which, in fact did not reach the Judge till after judgment was pronounced did not vitiate the proceedings; and that the Sessions Judge was not wrong in refusing to adjourn the case on the strength of a telegram said to have been received by prisoner's vakil stating that the High Court has ordered transfer. Fourthly, that the Sessions Judge ought not to have refused to adjourn the case in order to obtain the evidence of the two absent witnesses that their evidence was material and must be recorded and certified to the High Court under section 428, Criminal Procedure Code.

19 Mad. page 461.

[A.] KARIYADAN POKKAR v. KAYYAT BERRAN KUTTI

Criminal Procedure Code section 488—Maintenance of children—Moplahs—Personal law.

The right of children to be maintained by their actual father is a statutory right, and the duty is created by express enactment independent of the personal law of the parties. If the children are illegitimate, the refusal of the mother to surrender them to the father is no ground for refusing maintenance. If the children are legitimate the question of the mother's right to their custody would depend on the question whether the parties are governed by Mohammedan or Marumakkattayam law; because [1] if they are governed by Mohammedan law, the mother may have the

right to custody until the children attain the age of seven years; (2) if by the Marumakkattayam law, it is doubtful if the father could be held to have neglected his duty to maintain his children if they were actually maintained by the *karnavan* of their mother's *tarwad*, who is bound by law to maintain them.

19 Mad. page 464.

(B.) QUEEN-EMPRESS v. SAMINADHA PILLAI.

Penal Code, sections 188, 290—Public nuisance—Cremation—Disobedience to an order duly promulgated by a public servant—Criminal Procedure, section 143—Illegal order.

On the 11th August, 1894, the District Magistrate promulgated an order prohibiting the people of the village of Thirukodikkaval from using their burning grounds situated on the southern bank of the Cauvery and directing them to use other burning grounds which had been provided. On the 11th May, 1895, certain persons in defiance of this order, cremated a corpse at the spot interdicted, and were convicted under sections 188, 290, Indian Penal Code, but the conviction under section 188 was reversed on appeal.

Held, that when persons entitled to use a particular spot dedicated for the communal purpose of cremation, use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences necessarily incident to such an act as it is generally performed in this country they cannot be convicted of a public nuisance on the ground that their act caused material annoyance and discomfort to persons near the place on the occasion referred to.

Held, further, that the order of the District Magistrate was not warranted by section 143, Criminal Procedure Code, or by any other law, and must, therefore, be set aside.

19 Mad. page 482.

[C.] QUEEN-EMPRESS v. RARU NAYAR.

Confessions of co-accused—Corroboration—Material particulars—Evidence Act, section 30—Abetment—Penal Code, section 109.

Where the only evidence against two prisoners accused of murder directly implicating them in the commission of the crime consisted of confessional statements made by them before the Committing Magistrate, which were subsequently retracted, and the statements in such confessions were corroborated in material particulars by other evidence on the record.

Held, that the evidence was sufficient to support a conviction.

19 Mad. page 483.

[A.] QUEEN-EMPRESS v. DUMA
BAIDYA.*Penal Code, section 34, 56, 302—
Murder—Sentence of penal servitude.*

Where three prisoners assaulted the deceased and gave him a beating in the course of which one of the prisoners struck the deceased a blow on the head, which resulted in death.

Held, that in the absence of proof that the prisoners had the common intention to inflict injury likely to cause death, they could not be convicted of murder. The punishment of penal servitude is only applicable to Europeans and Americans.

20 Mad. page 1.

B. QUEEN-EMPRESS v. SUBRAMANIAN.

Penal Code, section 188—Local Board Act—Act V 1884, Disobedience to notices.

The President of a Local Board, acting under Act V of 1884, issued a notice calling a person to remove certain encroachments on a public road within ten days.

Held, that such a notice was not an order within the meaning of section 188, Indian Penal Code, and a person neglecting to obey it could not be convicted under that section.

20 Mad. page 3.

[C.] ALLAPICHA RAYUTHAR v.
MOHI DIN BIBI.*Criminal Procedure Code, section 488—
Maintenance—Sentence of imprisonment on default.*

The imprisonment provided by section 488, Criminal Procedure Code, in default of payment of maintenance awarded is not limited to one month. The maximum imprisonment that can be imposed is one month for each month's arrears, and if there is a balance representing the arrears for a portion of a month, a further term of a month's imprisonment may be imposed for such arrears.

20 Mad. page 8.

[D.] QUEEN-EMPRESS v. ABDUL KADAR
SHERIF SAHEB.*Criminal Procedure Code, section 195,
433—Abetment of an offence, section
109, Penal Code—Sanction to prosecute unnecessary.*

Though sanction to prosecute is necessary in cases falling under the sections of the Penal Code set forth in section 195, Criminal Procedure Code, no such sanction is required previous to the prosecution of a person charged with the abetment of such offences.

20 Mad. page 12.

E. QUEEN-EMPRESS v. PAUL.

*Indian Christian Marriage Act—Act
XV of 1872, section 68—Solemnize.*

In Indian Christian Marriage Act, section 68, the word "solemnize" is equivalent to the words "conduct, celebrate or perform." Therefore any unauthorised person not being one of the persons being married who takes part in performing a marriage, that is, in doing any act supposed to be material to constitute the marriage is liable to be convicted under that section: and a charge of abetment is sustainable against the persons being married.

20 Mad. page 16.

F. QUEEN-EMPRESS v. KUTTI ALI.

Local Boards Act—Act V of 1884 (Madras), section 87, clause 3—Government stores—Equipages.

Stores and carts belonging to the Government jails come within the words "Government Stores and Equipages" in clause 3, section 87, Act V of 1884, and are free from tolls under that Act.

20 Mad. page 31.

G. QUEEN-EMPRESS v. KRISH-
TAPPA.*Penal Code, section 174—Non-attendance
in obedience to an order of public servant—Absence of public servant.*

The offence contemplated by section 174, Penal Code, is an omission to appear at a particular time and at a particular place before a specified public functionary. Where therefore, the public servant was absent on the date fixed in a summons.

Held, that the person summoned could not be convicted under this section, though he failed to attend, having the intention to disobey the summons.

20 Mad. page 79.

H.) QUEEN-EMPRESS v. NAJUNDA
RAU.*Penal Code, section 211—False charge
of dacoity made to a Police Station-
house officer.*

A false charge of dacoity was made to a Police Station-house officer, who, after some investigation, referred it to the Magistrate as false, and the Magistrate ordered the charge to be dismissed without taking any action against the parties implicated. The person who preferred the charge was now tried under Penal Code, section 211 and was found to have acted with the intent and the knowledge therein mentioned and he was convicted and sentenced to four years rigorous imprisonment.

Held, that the prisoner had instituted criminal proceedings within the meaning of that section and that the conviction and sentence were in accordance with law.

20 Mad. page 87.

A. QUEEN-EMPRESS v. KARUPPA
UDAYAN.*Criminal Procedure Code, s. 419—Presentation of appeal petition by the clerk of the appellant's pleader.*

Presentation of an appeal petition by the clerk of the appellant's pleader is equivalent to a presentation by the pleader himself when it is signed by him and he is duly authorised.

20 Mad. page 88.

B. QUEEN-EMPRESS v. KANDAPPA
GOUNDAN.*Criminal Procedure Code, Act X of 1832. section 88—Attachment of property as of an absconding person—Claim to property attached—Procedure.*

When a claim is made to property attached under section 88 of the Code of Criminal Procedure, the Magistrate should stay the sale to give the claimant time to establish his right. If the Magistrate errs, the remedy of the aggrieved party is by civil suit and not by criminal revision petition.

20 Mad. page 189.

C. QUEEN-EMPRESS v. ARUMUGAM.

Evidence Act, sections 74, 76—Occurrence reports—Charge sheets, Right of an accused to copies of, before trial—Criminal Procedure Code, sections 157, 168, 173—Public documents—Right to inspect and have copies.

Held, by the FULL BENCH (SUBRAMANIA AYYAR, J., dissentiente). Reports made by Police Officer in compliance with sections 157 and 168 of the Criminal Procedure Code are not public documents within the meaning of section 74 of the Indian Evidence Act, and consequently an accused person is not entitled, before trial, to have copies of such reports.

Held, by COLLINS, C. J., AND BENSON, J.—The same rule applies to reports made by a Police Officer in compliance with section 173 of the Criminal Procedure Code.

Held, by SHEPARD and SUBRAMIA AYYAR JJ.—Reports made by a Police Officer in compliance with section 173 of the Criminal Procedure Code are public documents within the meaning of section 74 of the Indian Evidence Act, and consequently an accused person, being a person interested in such documents, is entitled by virtue of section 76 of the Indian Evidence Act, to have copies of such reports before trial.

20 Mad. page 235.

D. QUEEN-EMPRESS v. KATTAYAN.

Warrant issued under Act XIII of 1859—Execution outside jurisdiction—Criminal Procedure Code, section, 83.

Section 83 of the Criminal Procedure Code applies to warrants issued under section 1 of Act

XIII of 1859, and consequently such warrants may be executed outside the local jurisdiction of the Magistrates issuing them

20 Mad. page 339.

E. QUEEN-EMPRESS v. MOTHA.

Criminal Procedure Code, section 195—Sanction to prosecute—Power of Court to go outside record.

A Magistrate in deciding whether to sanction under Criminal Procedure Code, section 195, a prosecution for giving false evidence has power to hold an enquiry and record other evidence beside that in the case before him, in the course of which the offence is supposed to have been committed.

20 Mad. page 365.

F. NARASIMMA CHARARI v. SIN-
NAVAN.*Legal Practitioners Act, (Act XVIII of 1879) section 28—Oral agreement for pleader's remuneration—Criminal Proceedings—Quantum meruit.*

A pleader was retained by an accused person to conduct his defence. The accused did not pay the agreed fee, and the plaintiff whereupon declined to conduct his defence. The defendant, who was one of the accused then undertook orally to pay the fee, but failed to do so after the plaintiff had conducted the defence of both accused persons. The plaintiff now sued the defendant to recover the agreed amount.

Held, that under Legal Practitioners Act, section 28, the plaintiff was not entitled to recover on the contract, but that he was entitled to recover reasonable remuneration for the services rendered by him.

20 Mad. page 383.

G. QUEEN-EMPRESS v. SESHADRI
AYYANGAR.*Criminal Procedure Code, (Act X) section 487—Judicial proceedings.*

A Magistrate, who has refused to set aside an order sanctioning a prosecution in the charge of perjury, has no jurisdiction under Criminal Procedure Code, section 487, to try the case himself.

20 Mad. page 385.

H. QUEEN-EMPRESS v. SUBRAMANIA
AYYAR.*Railway Act (Act IX of 1890), section 113—Excess charge and fare recoverable as a fine—Magistrate not competent to impose imprisonment in default—Fine—Imprisonment.*

Section 113, sub-section 4, I of the Indian Railway Act IX of 1890, which directs that

on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine. does not authorise the Magistrate to impose imprisonment in default. The excess charge and fare referred to in the section is not a fine, though it may be recovered as such.

20 Mad. page 387.

A. QUEEN-EMPRESS v. KANAPPA PILLAI.

Criminal Procedure Code (Act X of 1882) section 202—Reference of cases to the Police for enquiry.

A Magistrate can send a case for inquiry by the Police under Criminal Procedure Code, section 202, only when for reason stated by him he distrusts the truth of the complaint. In cases where the accused is member of the Police force it is generally better that the enquiry should be prosecuted by a Magistrate.

20 Mad. page 388.

B. QUEEN-EMPRESS v. SINNAI GOUNDAN.

Criminal Procedure Code (Act X of 1882), section 203—Duty of Magistrate to examine witnesses for the complainant.

When the case has not been disposed of under Criminal Procedure Code, section 203, and the complainant's witnesses have been summoned, the Magistrate is bound to examine the witnesses tendered by the complainant, and is not entitled to acquit the accused on a consideration of the complainant's statement alone.

20 Mad. page 433.

C. QUEEN-EMPRESS v. VIRAPPA CHETTI.

Penal Code (Act XLV of 1860), sections 284, 283—Encroachment on public highway—Public nuisance.

Whoever appropriates any part of a street by building over it infringes the right of the public *quod* the part built over, and thereby commits an offence punishable under Penal Code, section 290, if not one punishable under section 283.

20 Mad. page 444.

D. QUEEN-EMPRESS v. VENKATARAM JETTL.

Criminal Procedure Code (Act X of 1882), section 11—Sentence imposed in British India postponed till expiry of a sentence imposed in Mysore.

It is competent to a Magistrate in British India to pass a sentence which should take effect after the expiration of a sentence in Mysore.

20 Mad. page 445.

E. QUEEN-EMPRESS v. RAMALINGAN.

Criminal Procedure—Criminal trial in Sessions Court—Examination of some of the witnesses bound over—Stopping the trial.

Certain persons were tried in a Sessions Court for the offence of dacoity. Seven witnesses had been examined for the prosecution by the Committing Magistrate and were bound over to give evidence at the trial. After five witnesses had been examined, the Judge asked the jury whether they wished to hear any more evidence, and on their stating that they did not believe the evidence and wished to stop the case, the Judge recorded a verdict of acquittal.

Held, that the procedure adopted was wrong, and that no final opinion as to the falsehood or insufficiency of the prosecution evidence ought to have been arrived at until the two remaining witnesses had been examined.

20 Mad. page 457.

F. QUEEN-EMPRESS v. MUTHAYYA.

Criminal Procedure Code (Act X of 1882), section 83—Breach of Contract Act—Act XIII of 1859—Warrant.

Criminal Procedure Code, section 83, is applicable to warrants issued under Breach of Contract Act, 1859, and they can be executed outside the jurisdiction of the Court which issued them.

20 Mad. page 470.

G. GANTAPALLI APPALAMMA v. GANTAPALLI YELLAYYA.

Criminal Procedure Code (Act X of 1882), section 488—Maintenance—Adultery.

Adultery on the part of the husband, not being such adultery as would be punishable under Indian Penal Code, may nevertheless constitute sufficient cause for the wife separating from her husband and enable her to claim maintenance under Criminal Procedure Code, section 484.

20 Bom. page 348.

H. QUEEN-EMPRESS v. DHANJIBHAI EDULJI.

Police Act (XIII of 1856) section 35, clause 1—Fraudulent possession of property—Property reasonably suspected of being stolen—Duty of the prosecution to prove to the satisfaction of the Court that there exist reasonable grounds of suspicion—Onus probandi.

A person cannot be called on to account for his possession of property under section

15, clause (1) of the Police Act XIII of 1856, unless there is evidence which satisfies, not the police officer, but the Court, after judicial consideration that such property "may be reasonably suspected of being stolen or fraudulently obtained."

20 Bom. page 394.

A. QUEEN-EMPRESS v. LATIFKHAN.
Police—Bombay Police Act (Bom. Act IV of 1890), sections 51 and 52—Duty of a police officer to shelter a person in custody—Penal Code (Act XLV of 1860) section 330—Using violence for the purpose of extorting a confession—Abetment—Illegal omission to act—"Respondent superior."

A policeman who stands by, acquiescing in an assault on a prisoner committed by another police man for the purpose of extorting a confession, is guilty of abetment of an offence under section 330 of the Indian Penal Code.

Nothing but fear of instant death is a defence for a policeman who tortures any one by order of a superior. The maxim *respondent superior* has no application in such a case. Under the Bombay Police Act (IV of 1890) every police officer is bound to shelter a person in custody, and to arrest persons committing assaults likely to cause grievous or lily injury. If he omits to perform this duty, he is guilty of abetment.

When the law imposes a duty to act on a person his illegal omission to act renders him liable to punishment.

20 Bom. page 502.

B. IN RE P. A. RODRIGUES.
Criminal Procedure Code, (Act X of 1882) section 555—Disqualification of a Judge—Pecuniary interest.

The accused was a compounder in the employ of Treacher & Co. He was tried and convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. It appeared that the Magistrate was a shareholder in the company which prosecuted the accused.

Held, that the Magistrate was disqualified from trying the case. As a shareholder of the company he had a pecuniary interest however small in the result of the accusation, and was, therefore, "personally interested" in the case within the meaning of section 553 of the Code of Criminal Procedure (Act X of 1882).

The words "personally interested" in the section are not intended to exclude pecuniary as distinguished from a personal interest.

20 Bom. page 510.

C. QUEEN-EMPRESS v. WARUBAI.
Criminal Procedure Code, (Act X of 1882) section 421—Judgment, rejecting an appeal need not be in writing—Practice—Procedure.

In rejecting an appeal under section 421 of the Code of Criminal Procedure Act X of

1882 the Appellate Court is not bound to write a judgment.

Farkan v. Shamsher Mahomed I. L. R. 22 Cal., 241, followed.

20 Bom. page 543.

D. QUEEN-EMPRESS v. NAGESHAPPA.
Criminal Procedure—Salt (Act XII of 1882)—Limitation prescribed for charging with offences—Fraud in concealing date of offence—Limitation (Act XI of 1877) section 18 not applicable to criminal proceedings—Revisional jurisdiction of High Court—Power to interfere with interlocutory orders of Subordinate Court.

The High Court can interfere with an interlocutory order passed by a Magistrate.

Abdul Qadir Khan v. The Magistrate of Purneah 20 Cal. W. R. Cri. 23, and Chandi Pershad v. Abdur Rahman I. L. R. 22 Cal. page 131, followed.

The provisions of section 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory term of section 11 of the Indian Salt Act XII of 1882 are not affected by that section.

20 Bom. page 617.

E. MUNICIPALITY OF BOMBAY v. SHAPURJI DINSHA.
Municipal Act, Bombay (111 of 1888) section 248—Fazendar—Fazendar not liable to provide privy accommodation—"Owner"—"Premises"—Meaning of the words—Construction—Construction of statutes.

A FAZENDAR is not the person liable, as owner of the premises, to provide privy accommodation under section 248 of the Bombay Municipality Act 111 of 1888, the beneficial owner of the house built on the Fazendar's land being "the owner" within the meaning of the section.

PER RANADE, J.—The word "premises" in section 248 of the Municipal Act is used with reference to the building to which the privy belongs.

20 Bom. page 794.

F. QUEEN EMPRESS vs. DADA HANMANT.

Penal Code (Act XLV of 1860) section 503, 506—Criminal intimidation.

A threat of getting a police constable dismissed from the police service is not such a threat of injury as is punishable under section 506 of the Indian Penal Code XLV of 1860.

20 Bom. page 795.

G. QUEEN-EMPRESS v. TATYA.

Evidence Act (1 of 1872) section 26—Confession—Police custody—Jailor in a Native State.

The custody of the keeper of a jail in a Native State, who is not a police officer, does not become

that of a police officer, merely because his subordinates, the warders of the jail, are members of the police force of that State. In the absence of any suggestion of a close custody inside the jail, such as may possibly occur when an accused person is watched and guarded by a police officer investigating an offence, section 26 of the Indian Evidence Act I of 1872 does not exclude such a jailor from giving evidence of what the accused told him while in jail.

21 Bom. page 495.

A. QUEEN-EMPRESS v. VISRAM
BA. A.JI.

Evidence—Confession—Statement of prisoner made before inquiry—Statement of prisoner made in the course of or after inquiry—Criminal Procedure Code (Act X of 1882) sections 164, 364, 538.

The sections comprised in Chapter XIV of the Criminal Procedure Code Act X of 1882 except section 155 do not apply to the Police in the Presidency towns, and consequently a statement or confession made to a Presidency Magistrate does not come within section 164 and the procedure prescribed in regard to the recording of statements or confessions by that section, and by reference section 364 does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. But such a statement or confession though not taken under section 164 is admissible in evidence against the prisoner.

Queen Empress v. Nilnathub I. L. R., 15 Cal. page 565 followed on this point

During an inquiry before a Presidency Magistrate after the evidence for the prosecution was taken the Magistrate examined the accused under section 203 and 312 of the Criminal Procedure Code Act X of 1882. The accused was examined in Marathi, but the questions and answers were recorded in English. The Magistrate deposed at the trial that it was the invariable practice in his Court to take down depositions in English and that he could not himself have accurately recorded the prisoner's statement in Marathi. He also deposed that the statement was correctly recorded in English and that each question and answer when recorded was interpreted to the accused in Marathi, and that the accused then made his mark at the end of the recorded statement. He further stated that there were at hand native subordinate officials of his Court who could have recorded the statement in Marathi, but that he himself had not sufficient knowledge of Marathi as to be able to read what was written by such a subordinate or to satisfactorily check or test the correctness with which it represented the statement made by the accused.

Held, that assuming that it was practicable to record the statement in Marathi and that consequently it was irregular with reference to section 361 of the Code to record it in English

the statement was nevertheless admissible in evidence under section 533, the irregularity not having injured the accused as to his defence on the merits.

Jai Narayan Rai v. Queen Empress I. L. R. 11 Cal. page 862 dissected from.

21 Bom. page 517.

B. IMPERATRIX v. APPAJI.

Penal Code (Act XLV of 1860) section 161—Public servant—Revenue and Police Patel—Agreement to restore village Mahars to office on payment of Rs. 300 towards repair of a village temple—Gratification—Official act.

The Mahars of a certain village having been suspended from their office for some months, a meeting of the villagers was held at the house of the Patel at which the Patel was present to consider the question of their restoration to office and an agreement was there come to that they should be restored on their paying a sum of Rs. 300 towards the repair of the village temple.

Held, that the Patel, being a public servant, had committed an offence under section 161 of the Penal Code Act XLV of 1860.

21 Bom. page 536.

C. IMPERATRIX v. KESHAVLAL.

Penal Code [Act XLV of 1860], section 426 and 44—Criminal trespass—Mischief—Who may complain.

The words "any person in possession" in section 441 of the Indian Penal Code, do not mean only "a complainant in possession."

Certain persons were prosecuted under sections 426 and 447 of the Indian Penal Code Act XLV of 1860 for committing mischief and criminal trespass by entering upon a certain field which was in the possession of the complainant's tenants and destroying the seed sown therein.

The defence raised was an *alibi*; it was also contended on behalf of the accused that the field belonged to one of them, and that the complainant had no title whatever to it.

The Magistrate who tried the case, declined to go into the question of title; he found that the complainant's tenants were in possession of the field and disbelieving the evidence of *alibi* he convicted the accused and sentenced them to fine.

On application in revision to the High Court it was urged *inter alia* that the complainant, not being the person in possession, could not legally institute the criminal proceedings, and that, therefore the conviction was bad.

Held, that, looking to the nature of the false defence set up by the accused, this was not a case for interference in revision, as to do so would encourage perjury.

Held also, that the words "any person in possession" in section 441 of the Indian

Penal Code do not mean only "a complainant in possession," there being no authority for holding the offences of mischief and criminal trespass out of the general rule which allows any person to complain of criminal acts.

References in the case of Kalinath Nag Chowdhury (9 Calo. W. R., page 1 Cr. R.), Chander Pershad vs. Evans (I. L. R., 22 Calo. page 123), Iswar vs. Sital (8 Beng. L. R. 62, App.), and *In re Ganesh Sathe* (I. L. R. 13 Bom. page 660), referred to.

[22 Bom. page 14.]

74. IMPERATRIX vs. JUMA.

Uganda.—Consular Court—Jurisdiction—Jurisdiction of Consular Court over persons not resident within a British Protectorate—Aiding the waging of war against a friendly power—Africa Orders in Council, 1889, 1892, 1893.

Two natives of a German Protectorate were convicted by the English Consular Court of Uganda of aiding and abetting the King of Uganda in waging war against the King of Uganda, and the Queen-Empress under sections 48 and 50 of the Africa Order in Council of 1889 as supplemented by the Order of Council of 1892 and 1893. One of them was also convicted of slave-dealing.

Held, that the English Consular Court had no jurisdiction, inasmuch as the accused, even if subjects of a Signatory Power, were not resident, and their offences were not committed, within a British Protectorate.

Held also, that the alleged fact that the "Kesiari" was in British military occupation gave no jurisdiction to the Consular Court.

[22 Bom. page 112.]

75. QUEEN-EMPRESS vs. BAL GANGADHAR TILAK.

Penal Code (Act XLV of 1860), section 124A

Evidence—Writings showing intention of inducing—Letters of contributors published in newspapers—Disaffection—Order to prosecute—Criminal Procedure Code (Act X of 1882), section 196—Construction—Reference to proceedings in Legislative Council.

The accused, who was the editor, proprietor and publisher of the "Kesari" newspaper, was charged under section 124A of the Penal Code (Act XLV of 1860) with exciting and attempting to excite feelings of disaffection to Government by the publication of certain articles, etc., in the "Kesari" in Bombay on the 15th June, 1897.

Under the prosecution given by Government under section 196 of the Criminal Procedure Code (Act X of 1882) in the following manner—

Under the provisions of section 196 of the Code of Criminal Procedure, Mirza Abas

Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr. Bal Gangadhar Tilak, B.A., LL.B., of Poona, publisher, proprietor and editor of the "Kesari," a weekly Vernacular newspaper of Poona, and against Mr. Hari Narayan Gokhale of Poona, printer of the said newspaper, in respect of certain articles appearing in the said newspaper, under section 124A of the Indian Penal Code and any other section of the said Code which may be found to be applicable to the case.

Counsel for the accused objected that the order was too vague and should have specified the articles with reference to which the accused was to be charged.

Held, that the order was sufficient and was admissible, but that if it were not sufficient, the commitment might be accepted and the trial proceeded with under section 532 of the Code of Criminal Procedure. Queen-Empress vs. Morton (I. L. R., 9 Bom. page 288) followed.

In order to show the intention of such publications, Counsel for the prosecution tendered in evidence a certain letter signed "Ganesh" which appeared in the issue of the "Kesari" of May 4, 1897. Objection was taken that it was not admissible, inasmuch as letters to newspapers often express opinions which are not the opinions of the editor and publisher.

Held, that the letter was admissible to show intention and animus.

The proceedings in the Legislative Council which result in the passing of an Act, cannot be referred to as aids to the construction of that Act. Administrator-General of Bengal vs. Premal Mullick, (L. R. 22 I. A., 107) followed.

Section 124A of the Penal Code (Act XLV of 1860) explained. Meaning of the word "disaffection."

At the close of the Judge's charge to the jury, Counsel for the first accused asked that the following points might be reserved for the decision of the Court under section 434 of the Criminal Procedure Code (Act X of 1882), viz:—

1. Whether the order for the prosecution was sufficient under section 196 of the Criminal Procedure Code.

2. Whether the High Court had power, in the absence of a sufficient order to accept the commitment of the accused under section 532 of the Criminal Procedure Code and to proceed with the trial.

3. Whether the meaning given to the term "disaffection" by the Judge in his charge to the jury was correct.

The Judge declined to reserve the above points.

The first accused having been convicted applied to a Full Bench under Clause 41 of the Amended Letters Patent, 1865, for a certificate that the case was a fit one for appeal to the Privy Council. The points upon which he desired to appeal were those which his Counsel at the close of the trial asked the Judge to reserve as above stated.

The Full Bench refused to grant the certificate.

[22 Bom. page 152.]

(4.) *QUEEN-EMPRESS vs. RAMCHANDRA NARAYAN.*

Penal Code (Act XLV of 1860), section 124A
—Disaffection, meaning of—Seditious publication.

The word "disaffection" in section 124A of the Indian Penal Code (Act XLV of 1860) is used in a special sense as meaning political alienation or discontent, a spirit of disloyalty to the Government or existing authority.

An attempt to excite feelings of disaffection to the Government is equivalent to attempt to produce political hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance.

This meaning of the word "disaffection" in the main portion of the section is not varied by the explanation.

PER PARSONS, J.—The word "disaffection" used in section 124A of the Indian Penal Code cannot be construed as meaning an absence of or the contrary of affection or love, that is to say, dislike or hatred but is used in its special sense as signifying political alienation or discontent, that is to say, a feeling of disloyalty to the existing Government, which tends to a disposition not to obey, but to resist and subvert the Government.

PER RANADE, J.—"Disaffection" is not a mere absence or negation of love or goodwill, but a positive feeling of aversion which is akin to disloyalty, a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people and weaken the bond of allegiance and prepossess the minds of the people with avowed or secret animosity to Government—a feeling which tends to bring the Government into hatred or contempt by imputing base and corrupt motives to it, and makes them indisposed to obey or support the laws of the realm, and which promotes discontent and public disorder.

[22 Bom. page 235.]

(B.) *QUEEN-EMPRESS vs. NAZLA KALA.*

Evidence Act (I of 1872) section 26—Confession—Confession made to a Magistrate of a Native State—Admissible—Evidence.

The words "Police officer" and "Magistrate" in section 26 of the Indian Evidence Act (I of 1872) include the Police officers and Magistrates of Native States as well as those of British India.

A confession made by a prisoner, while in police custody, to a First Class Magistrate of the Native State of Muth in Kathiawar, and duly recorded by such Magistrate, in the manner prescribed by the Code of Criminal Procedure, Act X of 1882, is admissible in evidence.

Queen-Empress vs. Sunder Singh (I. L. R. 12 All page 595), followed.

[18 All. page 152.]

(C.) *QUEEN-EMPRESS vs. KHUSHAL RAM.*

Criminal Procedure Code, sections 133, 138, 139—Order for removal of obstruction—Jury appointed to consider reasonableness of order—Procedure.

One K. R. having been ordered by a Magistrate under section 133 of the Code of Criminal Procedure to remove an alleged obstruction, applied for a jury. Five jurors were chosen, who, having examined the place in dispute, proceeded without consultation to deliver separate and independent opinions. The verdict of the majority was in favour of upholding the Magistrate's order. The Magistrate however discharged his order.

On reference by the Sessions Judge, under section 433 of the Code, it was held, that the last order of the Magistrate should be set aside and the case remanded for consideration by a fresh jury.

[19 All. page 174.]

(D.) *IN THE MATTER OF RAJENDRO NATH MUKERJI.*

Letters Patent, section 8—Conviction of vakil for criminal offence—Vakil called upon to show cause why he should not be struck off the roll—Argument not allowed to show that conviction was wrong.

A vakil practising in the High Court was convicted by a Court of Session, of the offence punishable under section 471 of the Indian Penal Code, and the conviction was affirmed by the High Court on appeal. The vakil was subsequently called upon to show cause why he should not, in consequence of such conviction, be struck off the roll of vakils of the Court. On appearance in answer to this rule it was.

Held, that the vakil was not entitled to question the propriety in law or in fact of the conviction, but that it was open to him to show, if he could, that his conduct in the matter in respect of which he had been convicted was not such as to render him an unfit person to be retained on the roll of vakils of the Court.

[18 All. page 208.]

(E.) *BALWANT SINGH vs. UMED SINGH.*

Criminal Procedure Code, section 166—Sanction to prosecute—Necessary contents of application for sanction.

An application for sanction to prosecute for forgery or perjury must indicate precisely the document in respect of which forgery is said to have been committed, or state set forth in detail the statements alleged to be false showing the place where and the occasion on which such alleged false statements were made.

[18 All. page 214.]

(A.) IN THE MATTER OF THE PETITION OF BANARSI DAS.

Criminal Procedure Code (Act X of 1882) section 195—Sanction to Prosecute—Sanction granted by Court without application being made by the person to whom it is granted.

A sanction to prosecute under section 195 of the Code of Criminal Procedure, presupposes an application for sanction, and where no such application is made a Court ought not to take upon itself to grant sanction, but should take action in the manner provided by section 476 of the Code. *Empress of India vs. Gوبرधन Das* (I. L. R. 3 All. page 62) referred to.

[18 All. page 221.]

(B.) KESRI vs. MUHAMMAD BAKHSH.

Criminal Procedure Code, section 200—Examination of the complainant—Complainant merely called upon to attest complaint in writing.

It is not a sufficient compliance with the provisions of section 200 of the Code of Criminal Procedure where a complainant, who has presented a written complaint, is merely called upon to attest the complaint on oath, no separate sworn statement of the complainant being recorded by or under the orders of the Magistrate to whom the complaint is presented. *Queen-Empress vs. Murphy* (I. L. R. 9 All. page 686) distinguished.

[18 All. page 246.]

(C.) QUEEN-EMPRESS vs. DALIP.

Act XLV of 1860 (Indian Penal Code) sections 99, 147, 332, 323.—Criminal Procedure Code, sections 55, 56, 114—Public servant in the execution of his duty—Arrest—Arrest without sufficient authority but in good faith—Assault on police making arrest—Right of private defence.

A warrant was issued by a Magistrate for the arrest of one Dalip under section 114 of the Code of Criminal Procedure. The warrant was sent to a certain thana to be executed. It was there, after being copied into a book kept for that purpose at the thana, made over to a particular constable for execution. When the constable to whom the warrant had been made over had left the thana it was discovered that Dalip was in a village other than that in which he had been supposed to be. Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana, endorsed on the back the names of one Nazir Hussain and some other constables and having signed the endorsement, sent Nazir Hussain and the others out

with this paper to arrest Dalip. Nazir Hussain and his companions arrested Dalip; but as they were returning with him in custody, some of Dalip's friends, aided by Dalip himself, attacked them, rescued Dalip and caused hurt to the Police.

Held, that the Police officers concerned in arresting Dalip under the circumstances above described were not acting in the lawful discharge of their duty within the meaning of section 332 of the Indian Penal Code, so as to render the accused liable to conviction under that section; but inasmuch as they were acting in good faith under the colour of their office, section 99 of the Indian Penal Code applied, and Dalip and his associates might be properly convicted under sections 147 and 323 of the Code.

The words "in the discharge of his duty as such public servant," in the earlier portion of section 332 of the Indian Penal Code, meant in the discharge of a duty imposed by law on such public servant in the particular case, and do not cover an act done by him in good faith under colour of his office. *The Queen vs. Roxburgh* (12 Cox. Cr. Calc. page 8) referred to.

[18 All. page 301.]

(D.) QUEEN-EMPRESS vs. LACHMI KANT.

Criminal Procedure Code section 423 (b) (3)—Enhancement of sentence—Power of Appellate Court.

Held, that the alteration by an Appellate Court of a sentence of a fine of Rs 50 or in default two months' simple imprisonment to a sentence of six months' rigorous imprisonment was an enhancement of the sentence, and as such, prohibited by section 423 of the Code of Criminal Procedure. *Queen-Empress vs. Dansang Dada* (I. L. R. 18 Bom. page 751) referred to.

[18 All. page 350.]

(E.) QUEEN-EMPRESS vs. RAM DEI.

Act XLV of 1860 (Indian Penal Code) sections 366, 368.—Criminal Procedure Code, section 180—Offences committed in different districts in the course of the same transaction—Commitment where to be made.

Ram Dei, Chajju, Piru and Kamar were committed by the Joint Magistrate of Muzaffarnagar to the Court of the Sessions Judge of Saharanpur. Upon the case which was before the Joint Magistrate, it appeared that Ram Dei had committed the offence punishable under section 366 of the Indian Penal Code in the district of Bijnor, and possibly the other three persons had committed the offence punishable under section 368 of the Indian Penal Code in the district of Muzaffarnagar; Chajju and Piru also possibly having committed the offence punishable under that section in Bijnor.

Under the above circumstances the High Court, maintaining the order of commitment made by the Joint Magistrate directed the case to be transferred for trial to the Court for the trial of Sessions cases arising in the Bijoor district, namely, that of the Sessions Judge of Moradabad. *Reg. vs. Samia Kaundan* (I. L. R. 1 Mad. page 173) and *Queen-Empress vs. Surja* (W. N. 1883 page 164), not followed. *Queen-Empress vs. James Ingle* (I. L. R. 16 Bom. page 200) and *Queen-Empress vs. Abbi Reddi* (I. L. R. 17 Ma. l. page 402), referred to. *Queen-Empress vs. Thaku* (I. L. R. 8 Bom. page 312), followed.

[18 All. page 353.]

(A.) *MEGHAI vs. SHEOBHIK.*

- Criminal Procedure Code, section 560—Frivolous and vexatious complaint—Act No. IX of 1871 (Cattle Trespass Act), section 20—Complaint of wrongful seizure of cattle—"Offence."

A complaint of the wrongful seizure of cattle is not a complaint of an offence within the meaning of the Code of Criminal Procedure. Consequently on the dismissal of such a complaint it is not competent to a Court to act under section 560 of the Code and award compensation to the persons against whom the complaint is made. *Pitchi vs. Ankappa* (I. L. R. 9 Mad. page 102), *Kottalanada vs. Muthaya* (I. L. R. 9 Mad. page 374), *Kala Chan1 vs. Gudadhur Biswas* (I. L. R. 13 Cal. Page 304) and *Nedaram Thakur vs. Joonab* (I. L. R. 23 Cal. page 248) referred to.

[18 All. page 358.]

(B.) *MANGAR RAM vs. BEHARI.*

Criminal Procedure Code, section 195—Sanction to prosecute—Notice to show cause not a necessary preliminary—Sanction not acted upon within six months—Removal of sanction.

An order under section 195 of the Code of Criminal Procedure sanctioning a prosecution for perjury is not bad by reason of notice to show cause not having been issued previously to the person against whom such order is made. *Krishnanund Das vs. Hari Bera* (I. L. R. 12 Cal. page 59), followed.

If an order under section 195 of the Code of Criminal Procedure lapses, not having been acted upon within six months, that does not bar the granting of fresh sanction on the same grounds if a sufficient reason for the delay be shown. *Darbari Mandar vs. Jagno Lal* (I. L. R. 22 Cal. page 573) not followed. *Gulab Singh vs. Debi Prasad* (I. L. R. 6 All. page 45) *Baldeo Singh vs. Parshadi* (W. N. 1893 page 245) referred to.

[18 All. page 364.]

(C.) *QUEEN-EMPRESS vs. MIRCHIA.*

Act XLV (Indian Penal Code) section 317—Exposure of child—Facts constituting the offence defined—Child left in charge of a blind woman and deserted.

A woman who was the mother of an illegitimate child, aged at the time about six months, left the child in charge of a blind woman in whose company she was, saying that she was going to get food and would return shortly. She went away to another village and did not return. Apparently she never intended to return. Upon these facts it was held, by BLAIR and AIRMAN, J.J., dissentient KNOX, J., that the mother of the child could not properly be convicted of the offence defined by section 317 of the Indian Penal Code.

[18 All. page 380.]

(D.) *IN THE MATTER OF THE EJECTION OF RUDRA SINGH.*

Criminal Procedure Code, section 272—Sessions case—Defence reserved—Examination by Magistrate of witnesses named for the defence.

The fact that an accused person committed to a Court of Session by a Magistrate has reserved his defence does not preclude the Magistrate from acting under section 272 of the Code of Criminal Procedure.

[18 All. page 395.]

(E.) *QUEEN-EMPRESS vs. SUBHAN.*

Act XLV of 1860 (Indian Penal Code) section 297—Trespass on burial ground—Acts complained of done with permission of owner.

He'd, that persons who entered upon a burial place and ploughed up the graves were liable to be convicted of the offence defined by section 297 of the Indian Penal Code, notwithstanding that their entry on the land was by the consent of the owner thereof.

[18 All. page 403.]

(F.) *FARZAND ALI vs. HANUMAN PRASAD.*

Criminal Procedure Code, section 191 (c) Act X of 1872, section 140 (c)—Complaint—By whom a complaint of an offence may be made.

The complaint upon which under section 191 (c) of the Code of Criminal Procedure, a Magistrate may take cognizance of an

offence may be made by any member of the public acquainted with the facts of the case, not necessarily by the person aggrieved by the offence to which the complaint relates. *Per Ganesh Narayan Sathe* (I. L. R. 13 Bom. page 600) followed.

[13 All. page 497.]

(A.) **QUEEN-EMPRESS vs. CHUNNI.**

Act XLV of 1860 (Indian Penal Code) section 304—Culpable homicide not amounting to murder—Grave and sudden provocation.

A person accused of murder under section 302 of the Indian Penal Code, pleaded in defence that he had found his sister having illicit connection with a man named Thakuri and had in a fit of passion killed them both on the spot. The statement being accepted was held to be a good plea of grave and sudden provocation so as to reduce the offence to one of culpable homicide not amounting to murder.

[19 All. page 50.]

(B.) **SHAH ABU ILYAS vs. ULFAT BIBI.**

Criminal Procedure Code, sections 488, 489, 490—Maintenance—Plea of divorce in answer to an application for enforcement of an order for maintenance of a wife.

When in answer to an application for enforcement of an order under section 488 of the Code of Criminal Procedure for the maintenance of a wife, the party against whom such order is subsisting pleads that he has lawfully divorced his wife and therefore the order can no longer be enforced, it is the duty of the Court hearing the application to entertain and consider such plea, and, if it find the plea established, to decline to enforce the order for any period subsequent to the date when the marriage ceased to subsist between the parties.

In such case, where the parties are Mohammedan, the marriage will be deemed to subsist until the expiration of the *iddat*.

In section 489 of the Code the "change in circumstances" referred to is a change in the pecuniary or other circumstances of the party paying or receiving the allowance which would justify an increase or decrease of the amount of the monthly payment originally fixed, and not a change in the status of the parties which would entail a stoppage of the allowance.

So held by *AKMAN* and *BENNERHASSETT, JJ.*, dissenting *KNOX, J.* In the Matter of the Petition of *Din Muhammad* (L. L. R. 5 All. page 826), *Abdur Rohman vs. Sakhina* (L. L. R. 3 Cal. page 553), *Zeb-un-nissa vs. Maudu Khan* (W. N. 1885 page 29), *In re Kasam Firibhai* (8 Bom. H. C. Report page 95).

In re Abdul Ali Ismailji (I. L. R. 7 Bom. page 180), *Mahomed Abid Ali Kumar Kadar vs. Ludden Sahiba* (I. L. R. 14 Cal. page 276), and *Mussammatt Baji vs. Nawab Khan* (29 Punj. Record page 69), referred to. *Nepoor Aurut vs. Jurai* (10 B. L. R., App. 33), dissented from. *Mahbubhan vs. Fakir Bakhsh* (I. L. R. 15 All. page 143); overruled.

[19 All. page 64.]

(C.) **FARZAND ALI vs. HANUMAN PRASAD.**

Criminal Procedure Code, section 526—Transfer of criminal case—Grounds upon which transfer may be granted.

What the court has to consider in the case of an application under section 526 of the Code of Criminal Procedure is not merely the question whether there has been any real bias in the mind of the presiding Magistrate against the accused, but also the further question whether incidents may not have happened, which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Magistrate are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. *Dupeyron vs. Driver* (I. L. R. 23 Cal. page 495) followed.

[19 All. page 78.]

(D.) **MANJHLI vs. MANIK CHAND.**

Criminal Procedure Code, section 520—Compensation for frivolous and vexatious complaint. Order in the alternative for imprisonment.

It is not competent to a Court in awarding compensation under section 560 of the Code of Criminal Procedure against a complainant for making a frivolous and vexatious complaint to order at the same time that in default of payment of the compensation the person against whom the order is made suffer imprisonment. *Queen-Empress vs. Punna* (I. L. R. 18 All. page 96) approved.

[19 All. page 74.]

(E.) **BRIJ BASTI vs. THE QUEEN-EMPRESS.**

Act XLV of 1860 (Indian Penal Code), section 451—House trespass with intent to commit adultery—Evidence.

To sustain a conviction under section 451 of the Indian Penal Code for the offence of house trespass with intent to commit an offence the prospective offence being adultery,

it is necessary to show that there has been no consent or connivance on the part of the husband of the woman the intent to commit adultery with whom is charged against the accused.

[19 All. page 109.]

(A.) **QUEEN-EMPRESS vs. RAM SUNDAR.**

Criminal Procedure Code (Act I of 1882), section 188—Act No. XLV of 1860, section 363—Kidnapping from lawful guardianship—Offence committed outside British territory—Jurisdiction—Certificate of Political Agent.

The absence of the certificate of the Political Agent required by section 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply.

Seem that the offence of kidnapping from lawful guardianship punishable under section 363 of Act XLV of 1860, is not a continuing offence.

[19 All. page 112.]

(B.) **MUTASADDI vs. MANI RAM.**

Criminal Procedure Code, sections 545, 547.—Fine—Portion of fine paid as compensation to complainant—Sentence of fine set aside—Recovery of compensation from complainant—Procedure.

On a sentence of fine being passed it was ordered, under section 545 of the Code of Criminal Procedure, that a portion of the fine should be paid as compensation to the complainant, and it was so paid. Subsequently the sentence was set aside in revision by an order of the High Court which directed that the fines should be refunded.

Held that the sum which had been paid to the complainant was recoverable under this order as part of the original fine, and that it was recoverable by process under section 547 of the Code and not by suit in a Civil Court.

[19 All. page 114.]

(C.) **BALWANT vs. KISHEN.**

Jurisdiction—Transfer of Magistrate—Order passed by a Magistrate after his successor had entered upon his appointment—Criminal Procedure Code, section 12.

By an order of the Local Government Babu Dila Ram, a Magistrate, exercising jurisdiction in the Meerut district, was transferred from that district "on the arrival of Kunwar Kamta Prasad."

Held, by **SAHARJI, J.**—That the effect of the order of transfer so expressed was that Babu Dila Ram ceased to have jurisdiction as a Magistrate within the Meerut district from the time when Kunwar Kamta Prasad commenced work as a Magistrate in that district.

Held, by **AIKMAN, J.**—That the effect of the said order was that Babu Dila Ram ceased to have jurisdiction on the arrival of Kunwar Kamta Prasad; but whether such arrival was his arrival within the limits of the district or at head-quarters was not clear from the order.

Empress of India vs. Anand Sarup (I. L. R. 3 All. page 563) referred to.

[19 All. page 119.]

(D.) **QUEEN-EMPRESS vs. BHADU.**

Practice—Pleading—Qualified plea of guilty—Evidence to be taken.

In capital cases where there is any doubt as to whether an accused person fully understands the meaning and effect of a plea of guilty it is advisable for the Court to take evidence and not to convict solely on the plea of the accused.

[19 All. page 121.]

(E.) **SHANKAR DIAL vs. VENABLES.**

Criminal Procedure Code, section 195—Sanction to prosecute—"Court to which appeals ordinarily lie"—Collector—District Judge.

For the purpose of granting or revoking a sanction to prosecute refused or granted under section 195 of the Code of Criminal Procedure, an Assistant Collector of the first class is subordinate to the District Judge. Hari Prasad vs. Debi Dial (I. L. R. 10 All. page 692) followed; Queen-Empress vs. Ajudhia Prasad (W. N. 1896, page 121) considered.

[19 All. page 200.]

(F.) **IN THE MATTER OF THE PETITION OF BARKAT.**

Criminal Procedure Code, section 342—Perjury—False statement made by a convict in an affidavit in support of an application for revision of the order by which he was convicted.

Held, that a person seeking by an application in revision to get rid of a conviction standing against him, is incapable of tendering his own affidavit in support of such application, and consequently that, if he did tender such an affidavit, he could not be prosecuted for false statements which might be contained therein. Queen-Empress vs. Subhaya (I. L. R. 13 Mad. page 661) referred to.

[19 All. page 249.]

(A.) QUEEN-EMPRESS vs. MATA PRASAD.

Criminal Procedure Code, sections 526, 192
 —Transfer of criminal case by the High Court to the Court of a District Magistrate
 —Interpretation of Order—Practice.

When a criminal case is transferred by an order of the High Court from a Court subordinate to a District Magistrate to the Court of a District Magistrate, if it is intended that the District Magistrate shall have power to transfer the case to a Subordinate Court, that intention will be expressed in the order of the High Court. If no such intention is expressed, it will be understood that, in the case of a transfer from a Court subordinate to a District Magistrate to a District Magistrate's Court, that District Magistrate's Court is expected to try the case itself; but when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate, it will be understood that, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply section 192 of the Code of Criminal Procedure and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it.

[19 All. page 291.]

B.) IN THE MATTER OF THE PETITION OF GUDAR SINGH.

Criminal Procedure Code, section 110, 117
 —Security for good behaviour—Transfer
 —Criminal Procedure Code, section 526.

Where a Magistrate instituting proceedings against a person under section 110 of the Code of Criminal Procedure has "acted" within the meaning of section 117 of the Code, no order can be made subsequently under section 526 of the Code transferring the case from his Court.

[19 All. page 302.]

(C.) IN THE MATTER OF THE PETITION OF LALJI

Magistrate, powers of—View of the scene of the occurrence by Magistrate trying a criminal case—Transfer—Criminal Procedure Code, section 526.

It is not only not objectionable, but in many cases highly advisable, that a Magistrate trying a criminal case should himself inspect the scene of the occurrence in order to understand fully the bearing of the evidence given in Court. But if he does so he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other.

[19 All. page 305.]

(D.) QUEEN-EMPRESS vs. NANI KISHORE.

Act XLV of 1860 (Indian Penal Code), section 218—Public servant framing an incorrect record to save himself from legal punishment.

A public servant who does that which, if done to save another from legal punishment, would bring the public servant within section 218 of the Indian Penal Code, has equally committed the offence punishable under section 218 if the person whom he intends to save from legal punishment is himself. *Queen-Empress vs. Gauri Shanker quoad hoc* (I. L. R. 6 All. page 43) overruled. *Queen-Empress vs. Girdhari Lal* (I. L. R. 8 All. page 653), referred to.

[19 All. page 311.]

(E.) QUEEN-EMPRESS vs. BALA MISRA.

Act III of 1867—(Gambling Act) section 6—Evidence of house being a common gaming house—Instruments of gaming—Cowries.

Held that the mere finding of cowries in a house searched in pursuance of a warrant issued under Act No. III of 1867 would not raise the presumption that the house was used as a common gaming house; but evidence that cowries were used in that house as instruments whereby to carry on gaming would bring the house within section 6 of the Act. *Queen-Empress vs. Bhawani* (W. N. 1893, page 139), referred to.

[19 All. page 390.]

(F.) QUEEN-EMPRESS vs. MANNU

Criminal Procedure Code, sections 172, 161, 162 and 167—Police diaries—What the diary should or should not contain—Statements recorded under section 161 of the Code of Criminal Procedure—Use which may be made of the special diary by the Court—Right of the accused or his agent to see the special diary—Act No. I of 1872 (Indian Evidence Act) sections 145, 161, 39.

A Sessions Judge, although he has power in any particular case which is before him to send for the Police diaries connected with the case, if he thinks it necessary to peruse them, has no authority to issue a general order that in every case committed for trial to the Court of Session, and in every criminal appeal, the Police diaries shall be submitted to the Court simultaneously with the Magistrate's record of the case. Such an order is illegal.

In no case is an accused person entitled as of right to a copy of any statement recorded

by a Police officer in the special diary prepared under the authority of section 172 of the Code of Criminal Procedure.

The special diary may be used by the Court to assist it in the inquiry or trial by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justice between the Crown and the accused; but entries in the special diary cannot by themselves be taken as evidence of any date, fact or statement therein contained.

The special diary may also be used by the Court for the purpose of contradicting the Police officer, who made it, and the special diary may be used by the Police officer who made it, and by no witness other than such officer, for the purpose of refreshing his memory.

If the special diary is used by the Court to contradict the Police officer who made it, or by the Police officer who made it to refresh his memory, the accused person or his agent has a right to see that portion of the diary which has been referred to for either of these purposes, that is to say, the accused person or his agent is entitled to see the particular entry which has been referred to and so much of the diary as in the opinion of the Court is necessary in that particular matter to the full understanding of particular entry so used, but no more.

So held by the Full Bench.

PER EDGE, C. J., KNOX, BLAIR and BURKITT, JJ.—A Police officer investigating a case may lawfully reduce into writing in the special diary the full and unabridged statement made to him by a person whom he is examining or has examined under section 161 of the Code of Criminal Procedure, and if he does so, his record of such statement is part of the special diary and is just as much privileged as any other entry in the diary.

All statements made under section 161 of the Code of Criminal Procedure to a Police officer and reduced into writing by him should be reduced into writing in the special diary and not elsewhere.

PER BANERJI, J. and AIKMAN, J.—Statements recorded under section 161 of Code of Criminal Procedure by a Police officer making an investigation were not intended by the Legislature to be entered in the special diary, and if they are so entered do not form an integral part of the diary and are not privileged, but the accused person or his agent is entitled to see them.

A mere summary, however, of facts ascertained by an investigating officer from persons examined by him, not being a report of their actual statements, may properly find a place in the special diary.

The following cases were referred to:—*The Empress vs. Kali Churn Chunari* (I. L. R. 8 Cal. page 164); *Kali vs. The Queen-Empress* page 29 P. R. Cr. 655; *Queen-Empress vs. Nasir-ud-din* (I. L. R. 16 All. page 207); *Queen-Empress vs. Jhubboo Mahton* (I. L. R. 8 Cal. page 79); in the matter of *Mahomed Ali Hajji vs. The Queen-Empress* (I. L. R. 16 Cal. page 612 notes); *Bikao Khan vs. The Queen-Empress* (I. L. R. 16 All. page 110); *Sheru Sha vs. The Queen-Empress* (I. L. R. 20 Cal. page 642); *Queen-Empress vs. Rud-Singh* (W. N. 1896 page 198); and *Reg vs. Uttamchand; Kapur-chand*; H. Bom. H. C. Rep. page 120).

[19 All. page 485.]

(A.) *QUEEN-EMPRESS vs. SCHADE.*

Act I of 1878 (Opium Act) section 9—Criminal Procedure Code, section 29—Commitment by Magistrate to Court of Session—No Jurisdiction in Court of Session—Commitment quashed.

Held, that inasmuch as a conviction of an offence punishable under Act No. I of 1878 must be by a Magistrate, a Magistrate taking cognizance of such an offence has no power to commit to the Court of Session. *Indrobeer Thaba* (1 W. R. Cr. R. 5) and *Regina vs. Donoghue* (5 Mad. H. C. Rep. page 277) referred to.

[19 All. page 502.]

(B.) *QUEEN-EMPRESS vs. SHAKIR.*

Criminal Procedure Code section 211—Procedure—Witnesses—Right of accused to have witness summoned in his defence when he has refused to give in a list in the Magistrate's Court.

If an accused person, on being called upon under section 211 of the Code of Criminal Procedure to give orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, declines to give in such list, cannot compel the Magistrate after committal to issue any summonses for witnesses on his behalf. Neither under such circumstances will the Sessions Judge be obliged to issue summonses for the attendance of such witnesses unless he is satisfied that their evidence may be material. *Queen Empress vs. Her Gobind Singh* I. L. R. 14 All. page (242) referred to.

[19 All. page 506.]

(C.) *QUEEN-EMPRESS vs. PANDEH BHAT.*

Criminal Procedure Code, sections 367 and 424—Judgment of Appellate Court—What such judgment must contain.

A Magistrate having special powers under section 36 of the Code of Criminal Procedure, convicted one P. B. under sections 471 and 476 of the Indian Penal Code and sentenced him to four years' rigorous imprisonment. P. B. appealed to the Sessions Judge, and on that appeal the Sessions Judge recorded the following judgment:—"I have perused the record and see no cause for interference with the finding of the District Magistrate. As regards the sentence, it is not excessive, but, having regard to the great age of the appellant, I will reduce it to three years' rigorous imprisonment with three months' solitary confinement."

Held, that this judgment was in compliance with the provisions of section 367 of the Code of Criminal Procedure, read with section 424 of the same Code.

[20 All. page 1.]

(.) **QUEEN-EMPRESS vs. ISHRI.**

Criminal Procedure Code, sections 35 and 357—Concurrent sentences not authorised by the Code.

There is no provision in the Code of Criminal Procedure by which a Court is empowered, on convicting an accused person of two or more offences at the same time, to direct that the sentences imposed in respect of such offences shall run concurrently.

[20 All. page 40.]

(B.) **QUEEN-EMPRESS vs. CHIDDA.**

Criminal Procedure Code, sections 337 and 529—Pardon—Tender of pardon by a Magistrate having power under section 337, but not being the Magistrate before whom the inquiry was being held.

A dacoity was committed in the district of Muttra and was being inquired into in that district. Pending such inquiry, one Partab Singh appeared before the Magistrate of the neighbouring district of Etah and obtained from him a tender of pardon in respect of the said dacoity, on the strength of which pardon he was examined as a witness by the Magistrate of the Etah district and made a statement implicating himself and others in the dacoity. Subsequently, on the case being committed to the Court of the Sessions Judge of Agra, the tender of pardon made by the District Magistrate of Etah was ignored, and Partab Singh was tried and sentenced for the dacoity.

Held, on appeal to the High Court that the Etah District had no jurisdiction under the circumstances to make the tender of pardon which he did, and that his action in that respect was not covered by section 529 of the Code of Criminal Procedure.

[30 All. page 55.]

(C.) **QUEEN-EMPRESS vs. AMBA PRASAD.**

Act XLV of 1860 (Indian Penal Code), section 124A—Exciting disaffection—Meaning of term “disaffection” explained.

Any one who, by any of the means referred to in section 124A of the Indian Penal Code, excites or attempts to excite, feelings of hatred, dislike, enmity or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of “disaffection” as that term is used in section 124A, such feelings are necessarily inconsistent with and incompatible with a disposition to render obedience to

the lawful authority of Government and to support that Government against unlawful attempts to subvert or resist it. The term “disaffection” may be taken as synonymous with “disloyalty.” The ordinary meaning of the term “disaffection” as used in section 124A is not varied by the explanation appended to that section.

When a person is charged with having committed the offence punishable under section 124A of the Indian Penal Code, his intention may be inferred from one particular speech, article or letter, or from that speech, article or letter considered in conjunction with what such person had said, written or published on another or other occasions. Where it is ascertained that the intention of such person was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written or published could have the effect of exciting such feelings of disaffection and it is immaterial whether the word were true or were false, and except on the question of punishment, or in a case in which the speaker, writer or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the word did in fact excite such feelings of disaffection. *Queen-Empress v. Jogendra Chander Bose* (1 L. R. 19 Cal. page 35); in the *Petition of Bal Gangadhar Tilak* (The Times Law Reports, page 50), referred to.

[20 All. page 70.]

(D.) **QUEEN-EMPRESS vs. MAKUNDA.**

Act XXII of 1881 (Excise Act) sections 27, 28, 29, 30, 31 and 47—Act XII of 1896, sections 36, 37, 38, 41, 57—Excise officer—Jurisdiction.

Held, that an officer invested with powers under sections 27, 28 and 29 of Act XXII of 1881, who had power in certain events to take the case before a Magistrate under section 32, was an Excise officer within the meaning of section 47 of the Act. *Queen-Empress vs. Ram Charan* (Weekly Notes, 1896, page 105), overruled.

[20 All. page 95.]

(E.) **QUEEN-EMPRESS vs. RAM PAL.**

Act IX of 1890 (Indian Railways Act) sections 113, 132—Act XLV of 1860, sections 40, 64—Criminal Procedure Code, section 33—“Offence”—Travelling on a Railway without a proper ticket—Punishment.

A passenger who travels in a train without having a proper pass or ticket with him has not committed an “offence.” He cannot therefore be legally sentenced to imprisonment in default of payment of the excess charge and fare, which may be legally recovered under the provision of section 113, clause 4 of Act IX of 1890.

[20 All. page 107.]

(A.) *QUEEN-EMPRESS vs. YUSUF.*

Practice—Appeal—Alteration of conviction in appeal

Where on appeal against a conviction for one offence, it became apparent that, although there was not sufficient evidence to support the conviction, there was evidence which might have led to the conviction of the appellants for an essentially different offence, with which they had not been charged, the Court declined to consider that evidence with a view to altering the conviction of the appellants. *Queen-Empress vs. Parbati* (W. N. 1887, page 130) referred to.

[20 All. page 120.]

(B.) *GOSWAMI RANCHOR LALJI vs. SRIGIRDHARIJI.*

Act XV of 1877 (Indian Limitation Act), Schedule II, article 47—Limitation—Criminal Procedure Code, section 146—Suit for possession of property attached by a Magistrate under section 146.

Article 47 of the second schedule to Act No. XV of 1877 does not apply to a suit brought by one of the two claimants against the other to recover possession of property which has been attached by a Magistrate under the provisions of section 146 of the Code of Criminal Procedure. *Chuj Mull vs. Khyrattee* (N. W. P. H. C. Rep., 1868, page 65) and *Akilandammal vs. Periasami Pillai* (I. L. R. 1 Mad. 39) referred to.

To such a suit as above Government is not a necessary party.

[20 All. page 121.]

(C.) *GAURI SHANKAR vs. MATA PARSHAD.*

Act XIII of 1859 (Fraudulent Breaches of Contract by Workmen), section 1—Criminal Procedure Code, section 83—Warrant

Held, that section 83 of the Code of Criminal Procedure is applicable to warrants issued under Act No. XIII of 1859. *Queen-Empress vs. Kat'ayan* (I. L. R. 20. Mad. 235) followed.

[20 All. page 133.]

(D.) *QUEEN-EMPRESS vs. MAIKULAL.*

Evidence—Confession—Value to be attached to a confession subsequently withdrawn.

It does not necessarily follow, because a confession made by an accused person is subsequently retracted and there is little or no evidence on the record to support the confession, that therefore the confession is to be rejected. The credibility of such a confession

is in each case a matter to be decided by the Court according to the circumstances of each particular case, and if the Court is of opinion that such a confession is true, the Court is bound to act, so far as the person making it is concerned, upon such belief. *Queen-Empress vs. Mahabir* (I. L. R. 18 All. 76) and *Queen-Empress vs. Rangi* (I. L. R. 10 Mad. 295) referred to.

[20 All. page 143.]

(E.) *QUEEN-EMPRESS vs. TULSHA.*

Act XLV of 1860 (Indian Penal Code), section 307—Attempt to murder—Intention—Knowledge of probable consequence of act—Presumption.

Where a woman of twenty years of age was found to have administered dh. tura to three members of her family, it was *held* that she must be presumed to have known that the administration of dhatura was likely to cause death, although she might not have administered it with that intention.

[20 All. page 151.]

(F.) *QUEEN-EMPRESS vs. MUHAMMAD ISMAIL KHAN.*

Act XLV of 1860 (Indian Penal Code), section 177—False information—Police officer recording a false report.

He'd, that a Police officer at a police station who being as such officer bound to enter all reports brought to him of cognizable or non-cognizable offences in the station diary, refused to enter a report made to him concerning the commission of an offence and entered instead in the diary a totally different and false report as that which was made to him, had thereby committed the offence punishable under section 177 of the Indian Penal Code.

[20 All. page 155.]

(G.) *QUEEN-EMPRESS vs. ZAWAR HUSEN.*

Evidence—Prosecution witness examined before the Magistrate but not called in the Court of Session—Witness called by the defence—Cross-examination by defending counsel disallowed.

Where the prosecution declined to call in the Court of Session a witness for the Crown who had been examined in the Magistrate's Court, and such witness was thereupon placed in the witness box by counsel for the defence, it was *held* that counsel for the defence was not entitled to commence his examination of the witness by questioning him as to what he had deposed in the Magistrate's Court. Questions as to his previous deposition were under the circumstances only admissible by way of cross-examination, with the permission of the Court, if the witness proved himself a hostile witness.

[20 All. page 158.]

4.) QUEEN-EMPRESS vs. HIMAI.

Act VIII of 1897 (Reformatory Schools Act), sections 4, 8 and 16—Order for detention in a Reformatory School under section 8—Revision—Powers of High Court.

Held, that the High Court has no power to interfere in appeal or revision with an order for detention in a Reformatory School passed in substitution for an order of transportation or imprisonment.

[20 All page 159]

(B.) QUEEN-EMPRESS vs. GOBINDA.

Act VIII of 1897 (Reformatory Schools Act), sections 8 and 16—Order for detention in a Reformatory School under section 8—Revision—Powers of High Court.

Held, that the High Court has no power to interfere in appeal or revision with an order for detention in a Reformatory School passed in substitution for an order of transportation or imprisonment.

[20 All page 160.]

(C.) QUEEN-EMPRESS vs. BILLAR.

Act VIII of 1897 (Reformatory Schools Act), sections 8 and 16—Order for detention in a Reformatory School under section 8—Revision—Powers of High Court.

The prohibition contained in section 16 of Act VIII of 1897 does not apply to an order for detention in a Reformatory School passed when the person to whom it relates has not been convicted of any offence and has not been sentenced to any term of imprisonment or transportation for which detention in a Reformatory could be substituted.

[20 All. page 166.]

(D.) QUEEN-EMPRESS vs. DAL SINGH.

Act XLV of 1860 (Indian Penal Code), section 498—Enticing away a married woman—Evidence of marriage—Mere statement of the complainant and the woman insufficient

Where a charge is made under section 498 of the Indian Penal Code, of enticing away a married woman, the Court should require some better evidence of the marriage than the mere statement of the complainant and the woman.

[20 All. page 181.]

(E.) QUEEN-EMPRESS vs. FATEH BAHADUR.

Criminal Procedure Code, section 555—Jurisdiction—Appellate Court not disqualified by interest from granting permission to a subordinate Court to try a case.

The interest which might disqualify a Court from trying or committing for trial

a case having regard to section 555 of the Code of Criminal Procedure, will not prevent an Appellate Court from giving the permission contemplated by that section.

[20 All. page 186.]

(F.) QUEEN-EMPRESS vs. LALTA PRASAD.

Act XI of 1890 (Prevention of Cruelty to Animals), section 6 (1)—Meaning of the word "permits."

Held, that the word "permits," as used in section 6, clause (1), of Act No. XI of 1890, implies knowledge of that which is permitted.

[20 All. page 206.]

(G.) QUEEN-EMPRESS vs. RAHIM BAKHSH.

Criminal Procedure Code, section 110, *et seq*—Security for good behaviour—Object of demanding security—Discretion of Magistrate in accepting or refusing sureties tendered.

The object of requiring security to be of good behaviour is not to obtain money for the Crown by the forfeiture of recognizances but to insure that the particular accused person shall be of good behaviour for the time mentioned in the order. It is therefore reasonable to expect and require that the sureties to be tendered should not be sureties from such a distance as would make it unlikely that they would exercise any control over the man for whom they were willing to stand surety. *Narain Sobodhdeo*, (22 W. R. Cr. R. 37) not followed.

[20 All. page 264.]

(H.) QUEEN-EMPRESS vs. AHMADI.

Criminal Procedure Code, section 208—Evidence—Procedure—Duty of Magistrate inquiring into a case triable by the Court of Session to take the evidence of the witnesses produced by the accused.

A Magistrate inquiring into a case under Chapter XVIII of the Code of Criminal Procedure is not empowered to frame a charge or make out an order for commitment until and after he has taken all such evidence as the accused may produce before him for hearing.

[20 All. page 307.]

(I.) QUEEN-EMPRESS vs. MUHAMMAD SHAH KHAN.

Act XLV of 1860 (Indian Penal Code), section 218—Public servant framing incorrect record—Injury to the public—Police officer framing a false report.

A report of the commission of a dacoity was made at a thana. The Police officer in charge of the thana at first took down the

report which was made to him, but subsequently destroyed that report and framed another and a false report—of the commission of a totally different offence—to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant.

Held, that on the above facts the Police officer was guilty of the offences punishable under section 204 and section 218 of the Indian Penal Code.

[20 All. page 339.]

(A.) QUEEN-EMPRESS *vs.* AJUDHIA.

Criminal Procedure Code, section 437—Orders for further inquiry—Order to the prejudice of an accused person—Notice to show cause.

Before any order is made to the prejudice of an accused person, notice should be given to that person to appear and show cause why the order should not be passed. *Queen-Empress vs. Chotu* (I. L. R. 9 All. 52) referred to.

[20 All. page 389.]

(B.) QUEEN-EMPRESS *vs.* CHITTAR.

Act XLV of 1860 (Indian Penal Code), section 215—Agreeing or consenting to take illegal gratification—Nature of agreement or consent.

In order to constitute the offence punishable under section 215 of the Indian Penal Code it is necessary that the person who is willing to take and the person who is willing to give the illegal gratification must agree not only as to the object for which the gratification is to be given, but also as to the shape or form the gratification is to take.

[23 Cal. page 420.]

(C.) GIRISH MYTE *vs.* QUEEN-EMPRESS.

Penal Code (Act XLV of 1860), section 213—Screening an offender—Judgment—Form of judgment—Criminal Procedure Code (Act X of 1882), sections 367 and 424.

Section 213 of the Penal Code is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence, and not when there is merely a suspicion of his having committed some offence. *Queen-Empress vs. Sami Natha* (I. L. R. 14 Mad. 400) followed. On appeal the Sessions Judge gave the following judgment: "After reading the evidence and hearing the learned Counsel for the appellant and the learned Government pleader, I am convinced that the Deputy Magistrate has decided the case rightly.

The appeal is dismissed." *Held*, that the judgment was not in accordance with the law within the meaning of sections 367 and 424 of the Criminal Procedure Code.

[23 Cal. page 421.]

(D.) QUEEN-EMPRESS *vs.* ASHWINI KUMAR GHOSE

Village Chowkidari Act (Bengal Act VI of 1870), section 8—Order imposing fine by Sub-Divisional Officer—Judicial order—Revision by the High Court.

Where the collecting member of a *panchayat* constituted under the provisions of the Village Chowkidari Act, Bengal Act VI of 1870, was fined by the Sub-Divisional Officer of Serampore under section 8 of the Act for having disobeyed his orders and realized assessment from the villagers under the Act from the month of Baisakh, though the Act was not introduced into the sub-division till the month of Katik following. *Held*, the fine having been imposed by a Magistrate under the provisions of an Act of the Bengal Council, it was imposed in respect of an "offence" as defined by section 4 of the Criminal Procedure Code and by virtue of section 4 of Bengal Act V of 1867, the provisions of section 63 to 70 of the Penal Code and section 61 of the Criminal Procedure Code were applicable to the fine. The order of the Sub-Divisional Officer was in its nature a judicial order, and was therefore subject to revision by the High Court. The order was bad because (1) there was no trial; (2) no act punishable with fine under section 8 of the Act (Bengal Act VI of 1870) had been committed; and (3) because the District Magistrate only had the power to impose the fine.

[23 Cal. page 441.]

(E.) FOOLKISSORY DASSEE *vs.* NORIN CHUNDER BHUNJO.

Evidence Act (I of 1872), section 38—Deceased witness—Criminal trial, deposition in, admissibility of, in civil suit—Specific Relief Act (I of 1877), section 9.

A prosecution was instituted by *S* against *N* at the instance and on behalf of *F* for criminal trespass in respect of a certain house, and on his own behalf for assault and insult. *S* gave evidence at the trial in support of these charges. *F* subsequently brought a civil suit against *N* for possession of the same house under section 9 of the Specific Relief Act. *S* died before the institution of the civil suit. At the trial of the civil suit the deposition of *S* in the Criminal Court was tendered by *F* as evidence on the issue of possession. *Held*, that *S* being dead and the proceedings being between the same parties and the issues being substantially the same deposition of *S* was admissible.

[23 Cal. page 442.]

(4.) RAGHU SINGH *vs.* ABDUL WAHAB.

Cattle Trespass Act (I of 1871), sections 20 and 22—Order by a Magistrate other than the Magistrate specified in section 20—Criminal Procedure Code (Act X of 1882), section 192 and sections 529, 537—Power—District Magistrate to transfer cases to a Subordinate Magistrate—Compensation, order awarding.

Section 192 of the Criminal Procedure Code (Act X of 1882) does not authorize a District Magistrate to transfer for trial to a Subordinate Magistrate cases which are not within the powers of that Magistrate to try either under section 23 of the Code or under some special or local law. A District Magistrate cannot transfer to any Magistrate cases under section 20 of the Cattle Trespass Act (I of 1871) which are triable only by the two classes of Magistrates specified in that section. An order awarding compensation under section 22 of the Act passed by any other Magistrate is illegal and cannot be cured by the provisions of section 529 or section 537 of the Criminal Procedure Code.

[23 Cal. page 493.]

(B.) JHOJA SINGH *vs.* QUEEN-EMPRESS.

Criminal Procedure Code (Act X of 1882), section 340—"Accused," meaning of—Right to be heard.

The word "accused" means a person over whom the Magistrate or other Court is exercising jurisdiction. Under the provisions of section 340 of the Criminal Procedure Code, a Sessions Judge is bound to hear the pleader appointed by a person who (though not accused of any offence) is ordered to give security for good behaviour under section 115 of the Criminal Procedure Code, *Queen-Empress vs. Mona Puna* (I. L. R. 16 Bom. 661) followed.

[23 Cal. page 495.]

(C.) DUPEYRON *vs.* DRIVER.

Transfer of criminal case—Criminal Procedure Code (Act X of 1882), section 526—Reasonable apprehension in the mind of the accused—Real bias—Incidents calculated to create apprehension of bias.

In dealing with applications for transfer, what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the accused, but also the further question, whether incidents may not have

happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have fair and impartial trial.

[23 Cal. page 499.]

(D.) UPENDRA NATH BHUTTACHAR-
JEE *vs.* KHITISH CHANDRA
BHATTACHARJEE.

Procedure—Jury, constitution of—Criminal Procedure Code (Act X of 1882) sections 133 to 138—Nomination of Jury by Magistrate—Bona fides of claim.

In the nomination of those members of the jury, the nomination of whom devolves upon the Magistrate under the provisions of section 138 of the Criminal Procedure Code, it is his duty to exercise his own independent discretion, and not merely to accept persons who may be put forward by the party opposed to the applicant. A jury constituted in violation of the provisions of section 138 is not legally constituted and is incapable of making a legally binding award. *Dino Nath Chuckerbutty vs. Hur Gobind Pal* (16 W. R. Cr. 23) and *Shatyanunda Ghosal vs. Camperdown Pressing Co* (21 W. R. Cr. 43) followed. Where a claim is raised to the land in respect of which proceedings are taken, the Magistrate before proceeding further should satisfy himself as to the bona fides of the claim. *Luckhee Narain Banerjee vs. Ram Kumar Mukerjee* (I. L. R. 15 Cal. 564) and *Queen-Empress vs. Bissessur Sahu* (I. L. R. 17 Cal. 562) approved of.

[23 Cal. page 502.]

(E.) TILAK CHANDRA SARKAR *vs.*
BAISAGOMOFF.

Criminal Procedure Code (Act X of 1882), sections 366 and 537—Pronouncing sentence before writing judgment—Irrregularity.

In this case, after the evidence was adduced on both sides, the Assistant Magistrate fixed a day for hearing argument and passing judgment. On that day argument was heard, and the case adjourned to another day for judgment, when the Magistrate pronounced sentence, though he had not written his judgment. The judgment was, however, written in the evening of the same day *Held*, the judgment of the Assistant Magistrate was not in accordance with the provisions of section 366 and 367 of the Criminal Procedure Code. In the circumstances of the case the omission of the Magistrate to record a judgment before pronouncing his sentence was an omission or irregularity which fell within the purview of section 537 of the Code. The

sentence itself, by reason of this irregularity, was not an illegal sentence so as to render the trial nugatory. *Queen Empress vs. Hargobind Singh* (I. L. R. 14 All. 242) and *Damu Senapati vs. Sridhar Rajwar* (I. L. R. 21 Cal. 121) discussed.

[23 Cal. page 532.]

(4.) MAHOMED BHAKKU vs. QUEEN-EMPRESS.

Sanction for prosecution—Preliminary enquiry—Offence by definite person or persons—Criminal Procedure Code (Act X of 1882), section 476—Civil Procedure Code (Act XIV of 1882), section 643.

The provisions of section 476 of the Criminal Procedure Code as well as of section 643 of the Civil Procedure Code clearly indicate that the Court taking action under either section must not only have ground for inquiry into an offence of the description referred to in those sections respectively, but must also be *prima facie* satisfied that the offence has been committed by some definite person or persons against whom proceedings in the Criminal Court are to be taken. *Khepunath Sirdar vs. Grih Chunder Mukerji* (I. L. R. 16 Cal. 730) and *Chowdry Mahomed Izarne Huq vs. Queen-Empress* (I. L. R. 20 Cal. 349) followed. A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under section 643 of the Civil Procedure Code made by a civil Court in any of the districts included in the group.

[23 Cal. page 557.]

(B.) KALI KISSEN TAGORE vs. ANUND CHUNDER ROY.

Criminal Procedure Code (Act X of 1882), section 147—Dispute concerning julkur right—Breach of the peace—Imminent danger—Grounds for Magistrate taking proceedings under section 47—Procedure to be adopted by Magistrate when dispute concerning easements, &c. exists.

The words "right to do anything in or upon tangible immovable property" in section 147 of the Criminal Procedure Code include julkur right. *Dukhi Mullah vs. Halway* (I. L. R. 23 Cal. 55) followed. If the materials upon which the proceedings are based do not disclose the fact that there is an imminent danger of a breach of the peace then the Magistrate has no jurisdiction to take action under section 147 of the Criminal Procedure Code. Any evidence that he may take in the course of the trial cannot give him a jurisdiction which he does not otherwise possess. *Queen-Empress vs. Gobind Chandra Das* (I. L. R. 20 Cal. 520). The proper course to be adopted by the Magistrate, when a dispute concerning easements, &c., arises, is to bind down

under section 107 of the Code such of the persons as are likely to disturb the peace. *Bathoo Lal vs. Domi Lal* (I. L. R. 21 Cal. 727) followed.

[23 Cal. page 576.]

(C.) IN THE MATTER OF AN ATTORNEY.

Practice—Attorney—Charges against—Publication.

The practice which prevails in England as regards the non-publication of the name of an attorney, against whom a rule has been obtained, approved of and followed.

[23 Cal. page 604.]

(D.) QUEEN-EMPRESS vs. KADAR NASYER SHAH.

Penal Code (XIV of 1860), section 84—Unsoundness of mind—Criminal liability, legal test of.

A person subject to insane impulses, but whose cognitive faculties appear to be unimpaired, is not by virtue of section 84 of the Indian Penal Code exempt from criminal liability.

Semle.—In extreme cases it is difficult to say that the cognitive faculties are not affected when the will and the emotions are affected. It may therefore be said that, under the provisions of section 84 of the Penal Code, exemption from criminal liability by reason of unsoundness of mind extends as well to cases where insanity affects the offender's will and emotions as to those where it affects his cognitive faculties. *Queen-Empress vs. Lakshman Dagdu* (I. L. R. 10 Bom. page 512); *Queen-Empress vs. Venkatasami* (I. L. R. 12 Mad. page 459) and *Queen-Empress vs. Razai Mia* (I. L. R. 22 Cal. page 817), followed.

[23 Cal. page 610.]

(E.) RAJ KUMARI DEBI vs. BAMA SUNDARI DEBI.

Criminal proceedings, stay of, pending a civil suit—Power of the High Court in quashing proceedings before Magistrate's judgment in a civil action—Admissibility of, in criminal prosecutions.

PER RAMPINI, J.—The High Court has no power to direct that criminal proceedings in the Court of a Magistrate should be stayed, until the disposal of a civil suit, in which the question at issue in a criminal proceeding shall have been decided. In the matter of *Ram Prasad Hazra* (B. L. R., F. B. 426) followed. It is very doubtful if the High Court has any power to pass an order quashing the pro-

ceedings before a Magistrate. No section of the Criminal Procedure Code, expressly authorizes the High Court to quash pending proceedings. A judgment in a civil action cannot be given in evidence in a criminal prosecution for establishing the truth of the acts upon which it is rendered. Whatever may be the nature of the decision of the Civil Court, the Magistrate ought to decide the question of the accused's criminality by himself.

PER GHOSH, J.—A proceeding in a Criminal Court should not, as a general rule, be stayed pending the decision of the civil suit in regard to the same subject matter; but ordinarily it is not desirable, if the parties to the two proceedings are substantially the same and the prosecution is but a private prosecution, and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time. It is open to the Magistrate, having regard to the facts of the case before him, to consider whether it is not desirable that the proceedings in his Court should be stayed, till the decision of the civil suit or for a limited period of time; and it is also open to him to put the defendant on terms as to appearance or otherwise, if he does stay proceedings. The High Court has the power to order a Magistrate to stay proceedings in his Court, sufficient cause in that behalf is made out. But, inasmuch as the Legislature has given him the power to regulate the proceedings in his own Court, the discretion should ordinarily be left to him either to stay proceedings or not, as he, in the circumstances of each case, may think right and proper.

The decision in a civil suit would be admissible in evidence in a criminal case, if the parties are substantially the same and the issues in the two cases are identical.

[33 Cal. page 621.]

(A.) RAI ISRI PERSHAD vs. QUEEN. EMPRESS.

Criminal Procedure Code (X of 1882), section 117—General repute, evidence of—Rumours.

Evidence that there are rumours in a particular place that a man has committed acts of extortion on various occasions; that he has *badmashes* in his employ to assist him, and generally that he is a man of bad character is not evidence of general repute under section 117 of the Criminal Procedure Code. Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute that is strong evidence that he is a man of good character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that

he is a man of bad character. It cannot be said that, because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, these rumours are in themselves evidence under section 117 of the Code.

[23 Cal. page 867.]

(B.) ANGADA RAM SHAHA vs. NEMAI CHAND SHAHA.

Defamation—Libel in judicial proceeding—Privilege—Liability for damages in a civil action

A defamatory statement made in the pleadings in an action is not absolutely privileged. *Nathji Muleshwar vs. Lalbhai Ravidat* (I. L. R. 14. Bom. page 97) dissented from.

[23 Cal. page 896.]

(C.) ABDUL GAFUR vs. QUEEN-EMPRESS.

Warrant of arrest—Criminal Procedure Code (X of 1882), sections 75 and 80—Signature of Magistrate—Initials—Notification of substance of warrant—Penal Code (XLV of 1860), section 186—Discharge of public functions.

A public servant executing a warrant of arrest which is not signed by the Magistrate as required by section 75 of the Criminal Procedure Code, but only bears his initials, and the substance of which is not notified to the person to be arrested as required by section 80 of the Code cannot be said to be acting in the discharge of his public functions in a manner authorized by law. A person obstructing him cannot be convicted under section 186 of the Penal Code.

[23 Cal. page 971.]

(D.) SHAMA CHARAN DAS vs. KASI NAIK.

Penal Code (Act XLV of 1860), section 210—Sanction to prosecute—Code of Criminal Procedure (Act X of 1882), sections 195, 439—Superintendence of High Court—Code of Civil Procedure (Act XLV of 1882), section 622.

A decree-holder applied for execution of his decree against the judgment-debtor. The application was dismissed on the ground that the decree had been satisfied out of Court. The judgment-debtor then applied for and obtained sanction to prosecute the decree-holder under section 210 of the Penal Code.

Held, that such sanction must be revoked, because the decree had not been caused to be executed, and therefore no offence under section 210 of the Penal Code had been committed.

[23 Cal. page 975.]

(A.) *QUEEN-EMPRESS vs. JABANULLA.*

Appeal in criminal case—Criminal Procedure Code (Act X of 1882), section 423—Power of the Appellate Court—Altering a finding of acquittal into one of conviction.

The Appellate Court can, under the provisions of section 423 of the Criminal Procedure Code, in an appeal from a conviction, alter the finding of the Lower Court and find the appellant guilty of an offence of which he was acquitted by that Court.

[23 Cal. page 83.]

(B.) *NILRATAN SEN vs. JOGESH CHANDRA BHUTTACHARJEE.*

**Complaint—Complaint, dismissal of—Re-
val of proceedings—Criminal Procedure
Code (Act X of 1882), sections 203, 427
—Final disposal of case—Application of
section 537 of the Criminal Procedure
Code.**

Where an original complaint is dismissed under section 203 of the Criminal Procedure Code, a fresh complaint on the same facts cannot be entertained so long as the order of dismissal is not set aside by a competent authority. Section 537 of the Criminal Procedure Code is not intended to apply to a case which has not been finally disposed of.

[24 Cal. page 53.]

(C.) *MUKTI BEWA vs. JHOTU SANTRA.*

**Compensation—Compensation to accused in
criminal case—Criminal Procedure Code
(Act X of 1882), section 560—Separate
charges—Complete discharge or acquittal.**

The accused was charged under section 352 and section 379 of the Penal Code, but convicted under section 352, being discharged under section 379. The Magistrate ordered the complainant to pay compensation for bringing a frivolous and vexatious charge under section 560 of the Criminal Procedure Code. The order for paying compensation was set aside on the ground that section 560 could only operate when there was a complete discharge or acquittal.

[24 Cal. page 55.]

(D.) *PROTAB NARAIN SINGH vs. RAJENDRA NARAIN SINGH.*

**Possession, order of Criminal Court as to—
Criminal Procedure Code (Act X of 1882),
section 145—Initial proceedings—Parties
concerned—Adding parties during the
course of the proceedings.**

Before initiating proceedings under section 145 of the Criminal Procedure Code it is the duty of the Magistrate not only to be satisfied that a dispute likely to cause a breach of the peace exists, but also to ascertain, as far as possible who are concerned in the dispute. The Magistrate has no power to add parties during the course of the proceeding unless in the initial proceeding he is satisfied that they are concerned in the dispute. If in the course of the proceedings it appears to the Magistrate that it is absolutely necessary that other parties should be required to attend, the only course open to him is to initiate a new proceeding. *Ram Chunder Das vs Monohur Roy* (I. L. R. 21 Cal page 29) discussed.

[24 Cal. page 155.]

(E.) *IN THE MATTER OF JHOJHA SINGH vs. QUEEN-EMPRESS.*

**Security for good behaviour—Criminal Pro-
cedure Code (Act X of 1882), sections 110
and 123—Power of Sessions Judge to re-
mand—Taking further evidence—Condi-
tions and limitation imposed upon persons
required to give security.**

Under section 123 of the Criminal Procedure Code a Sessions Judge is not competent to remand a case for further inquiry. Such evidence as he may require he must take himself. No conditions and limitations can be imposed upon persons ordered to give security under section 118 of the Code.

[24 Cal. page 167.]

(F.) *IN THE MATTER OF ANANDA CHUNDER SINGH vs. BASU MUDH.*

**Magistrate, jurisdiction of—Disqualification
of Magistrate to try case—Criminal Pro-
cedure Code (Act X of 1882), sections
202, 540, 555—Summons case.**

Where a Magistrate before whom a complaint was made held an enquiry under section 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under section 341 of the Penal Code.

Held, that there is nothing in the Criminal Procedure Code which disqualifies a

Magistrate who holds a preliminary enquiry under section 202 from trying the case himself, and that the provisions of section 555 had no application, inasmuch as the Magistrate had not initiated or directed the proceedings against the accused person, nor taken an active part in the arrest or collection of evidence against such person.

Held, also, that the Magistrate was strictly within his rights under section 510 of the Criminal Procedure Code in receiving fresh evidence, after evidence on both sides had been taken and the case adjourned for judgment, inasmuch as the case was still a pending case, when such evidence was taken.

[24 Cal. page 286.]

✓ A.) KOMAL CHANDRA PAL vs. GAUR CHAND AUDHIKARI.

Complaint—Dismissal of complaint—Revival of proceedings—Criminal Procedure Code (Act X of 1882), sections 202, 203, 437—Final disposal of case—Want of jurisdiction—Conviction

Where an original complaint is dismissed under section 203 of the Criminal Procedure Code, a fresh complaint on the same facts before the same Magistrate cannot be entertained, so long as the order of dismissal is not set aside by a competent authority. *Nilratan Sen vs. Jogesh Chandra Bhattacharjee*, (I. L. R. 23 Cal. page 983) followed.

[24 Cal. page 288.]

(B.) GOPAL LALL SEAL vs. MANICK LALL SEAL.

Witness—Cross-examination of witness called by the Court—Evidence (Act I of 1872), section 165—Criminal Procedure Code (Act X of 1882), section 540.

Where in the course of a criminal proceeding a Magistrate himself summoned a witness and examined her under section 165 of the Evidence Act, but refused to allow the attorney who appeared for the complainant to cross-examine the witness.

Held, that the Magistrate was wrong in not allowing the complainant's attorney to cross-examine the witness when she was summoned.

Held, also, that there is nothing in section 165 debaring or disqualifying a party to a proceeding from cross-examining any witness summoned by the Court.

[24 Cal. page 316.]

C.) RAMZAN KUNJRA vs. RAM KHELA-WAN CHOWBEY.

Criminal Procedure Code (Act X of 1882), section 423, clause (b), sub-section 3—Penal Code (Act XLV of 1860), sections 147, 879—Enhancement of sentence.

In a case where the accused were convicted by a Deputy Magistrate of the offence of riot-

ing under section 147, and theft under section 379 of the Penal Code, and sentenced to four months for the first and two months for the latter offence but on appeal the District Magistrate, considering the case to be one of theft rather than rioting, abandoned the sentence under section 147, but upheld the conviction under section 379, of the Penal Code, and sentenced them to six months' rigorous imprisonment.

Held, that what the District Magistrate had in effect done was to enhance the sentence under section 379 of the Penal Code, which he had no power to do under section 423, clause (b), sub-section 3 of the Code of Criminal Procedure

[24 Cal. page 320.]

(D.) QUEEN-EMPRESS vs. JOGENDRA NATH MUKERJEE.

Warrant of arrest—Illegal issue of warrant—Code of Criminal Procedure (Act X of 1882), sections 76, 81, 90—Penal Code (Act XLV of 1860), sections 143, 186, 406—Justifiable assault—Criminal Procedure Code, section 160—Investigation by Police—Witness.

Where a District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the police, and in attempting to execute such warrant the police arrested the wrong person and were assaulted in the attempt.

Held, that, apart from the fact that the attempt to arrest was made on the wrong person, a District Magistrate has no authority to issue a warrant for the production of a witness at an investigation by a Police Officer, but only before his own Court under sections 76, 81 of the Code of Criminal Procedure.

Held, also, that as the investigation was held by a Police Officer under Chapter XIV of the Criminal Procedure Code, the proper course was for the Sub-Inspector of Police to require the attendance of the witness under section 160 of the Code of Criminal Procedure, and on failure by her to comply with such order, prosecute her under section 174 of the Penal Code.

Held, further, that the accused were justified in their resistance, and that no offence either under section 143 or section 186 of the Penal Code was committed, and that they should be acquitted.

[24 Cal. page 324.]

(E.) JAGARNATH MANDHATA vs. QUEEN-EMPRESS.

Bengal Excise Act (Bengal Act VII of 1878), sections 4, 40, 75—Bengal Excise Act Amendment Act (Bengal Act IV of 1881), section 3—Right of search, Gurjat-ganja—Exciseable article—Foreign exciseable article

In a case where an Excise Sub-Inspector attempted to search a house for *Gurjat-ganja*, a

"foreign exciseable article" under Excise Act (Bengal Act VII of 1878), and resistance was offered.

Held, that *Gurjat-ganja* being a "foreign exciseable article" under section 4 of the Act as amended by Bengal Act IV of 1881, the excise officer had no legal authority to enter and search the house under section 40 of the Act; he had authority only to enter and search for any "exciseable article" as defined in section 4 of the Act; and that no offence either under section 141 or section 353 of the Penal Code was committed.

Held, also, that section 75 of the Act does not apply to a "foreign exciseable article."

[24 Cal. page 344.]

(A) SHAMA CHARAN CHAKRA-
VARTI vs. KATU MUNDAL.

Recognizance to keep the peace—Criminal Procedure Code (Act X of 1882), section 107—Jurisdiction of Magistrate

In a case where an accused was bound over to keep the peace by the Deputy Magistrate of the district in which the accused was *temporarily* residing at the time when the Magistrate received information and instituted proceeding against him.

Held, that although the accused permanently or habitually resided in another jurisdiction, he was sufficiently within the jurisdiction of the Magistrate within the meaning of section 107 of the Criminal Procedure Code.

[24 Cal. page 360.]

(B.) AUKHOY CHANDRA HATI vs. CALCUTTA MUNICIPAL CORPORATION.

Calcutta Municipal Consolidation Act (Bengal Act II of 1888), sections 335, 336—Date of taking out license.

In a case where the owner of a cowshed delayed taking out a license under section 335 of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888), until the end of the month of May

Held, that under the section as it stands there is nothing to compel a licensee to take out his license before 1st June in every year.

[24 Cal. page 391.]

(C.) KAILASH CHANDRA PAL vs. KUNJA BEHARI PODDAR.

Criminal Procedure Code (Act X of 1882), section 145—Authority of District Magistrate—Sub-Divisional Magistrate.

In a case where a District Magistrate made an order stating that in his opinion it was the duty of the Sub-Divisional Magistrate to institute proceedings under section 145 of the Criminal Procedure Code.

Held, that the District Magistrate had no authority in law to direct the Sub-Divisional

Magistrate to institute such proceedings. *Queen-Empress vs. Gobind Chandra Das* (I. L. R. 20 Cal. page 520) followed.

[24 Cal. page 395.]

(D.) SRINATH ROY vs. MINADDI HALDER.

Nuisance—Criminal Procedure Code (Act X of 1882) sections 93, 137, 437—Further enquiry—*Ultra vires*—Obstruction to public thoroughfare.

In a complaint for alleged obstruction of a public thoroughfare, the Magistrate, after making preliminary enquiries, was of opinion that the alleged way was not a public thoroughfare, and refused to take action under section 133 of the Code of Criminal Procedure. The Sessions Judge, being of opinion that the Magistrate should have gone on with the case, directed a further enquiry under section 133. Such enquiry was held, and the Magistrate without taking evidence in support of the complaint, made his conditional order under section 133 absolute under section 137.

Held, that the order of the Sessions Judge directing a further enquiry, was *ultra vires*, there being no section of the Code under which an order for further enquiry could be made in the case; section 437 having no application.

Held, also that the Magistrate, before whom the petitioner shewed cause, should not have made his conditional order under section 133 absolute without taking evidence upon the matter of the complaint; the words "evidence in the matter" meaning "in the matter of the complaint," and not simply evidence which the opposite party might offer.

[24 Cal. page 429.]

(E) QUEEN-EMPRESS vs. KAYEMULAH MANDAL.

Magistrate, Jurisdiction of—Power of commitment to Sessions Judge—Code of Criminal Procedure (Act X of 1882), sections 28, 207, 245, 254—Penal Code (Act XLV of 1860), section 147—Circular Order No. 9 of 6th September 1869—Rioting.

The commitment of a case under section 147 of the Penal Code to the Court of Session by a Deputy Magistrate is not necessarily illegal. Although the case is shown to be triable only by a Magistrate under the second schedule of the Criminal Procedure Code, there is nothing in section 254 of the Criminal Procedure Code which prevents a Magistrate committing a case under section 147 of the Penal Code to the Court of Session, provided he finds that the accused has committed an offence which in his opinion cannot be adequately punished by him. The instructions contained in Circular No. 9 of 6th September, 1869, are to be read subject to the provision of the Criminal Procedure Code.

[24 Cal. page 492.]

(4.) **QUEEN-EMPRESS vs. MANICK CHANDRA SARKAR.**

Practice—Sanction to prosecute—Application for sanction—Criminal Procedure Code (Act X of 1882), sections 337, 339—Approver—Penal Code, section 302—Withdrawal of conditional pardon

An application to the High Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the Crown in open Court. The withdrawal of the conditional pardon should be made under section 339 of the Criminal Procedure Code by the authority that granted it and not by the High Court.

[24 Cal. page 494.]

(8.) **CAHOON vs. MATHEWS**

Penal Code (Act XLV of 1860), section 269—Negligent act—Refusal to allow person suffering from infectious disease to be removed to a hospital—Public nuisance—Penal Code, sections 268, 270.

Where a mother refused to allow her daughter suffering from small-pox to be removed to a hospital in accordance with an order made by the District Magistrate, unless she accompanied her, and was convicted of an offence under section 269 of the Penal Code by the District Magistrate.

Held, that no unlawful or negligent act had been committed within the meaning of section 269 of the Penal Code.

[24 Cal. page 499.]

(C.) **QUEEN-EMPRESS vs. FATTAR CHAND.**

Magistrate, Jurisdiction of—Disqualification of Magistrate to try case Witness—Omission to record statement of accused under Code of Criminal Procedure (Act X of 1882), section 364—Criminal Procedure Code (Act X of 1882), section 517—Orders as to disposal of property as to which no offence has been committed—Property found by Police in possession of accused—Magistrate, Power of.

Where a Magistrate, before whom an accused person is brought, omits to record, as provided by section 364 of the Criminal Procedure Code, statements made by the accused, he does not thereby make himself a witness, and so become disqualified from trying the case.

The accused was convicted of criminal breach of trust in respect of certain money belonging to the complainant, and on his conviction the Magistrate made an order

under section 517 of the Code of Criminal Procedure, directing that an amount equal to the monies embezzled should be repaid to the complainant out of certain sums of money found by the police on the person of the accused.

Held, that the Magistrate had no power to make the order under section 517 of the Criminal Procedure Code, their being nothing to show that any offence had been committed with regard to the property, or that it had been used for the commission of any offence.

[24 Cal. page 528.]

(D.) **GRISH CHUNDER ROY vs. DWARKA DASS AGARWALLAH.**

Criminal, Dismissal of—Revival of proceedings—Right of appeal—Criminal Procedure Code (Act X of 1882), sections 423, 439—Presidency Magistrate, Jurisdiction of.

When a complaint was dismissed by an Honorary Magistrate and an application was made to a Presidency Magistrate on the same facts and materials for a fresh summons.

Held, that as a Presidency Magistrate has co-ordinate jurisdiction with an Honorary Magistrate, there was no right of appeal to the Presidency Magistrate, from the order of the Honorary Magistrate. The proper course would be to apply to the High Court under sections 423 and 439 of the Criminal Procedure Code to set aside the order and direct a retrial. *Niratanen vs. Jogesh Chundra Bhattacharjee* (I.L.R. 23 Cal. page 983) approved; *Virankutti vs. Chiyamu* (I. L. R. 7 Mad. page 557) and *Opoorba Kumar Sett. vs. Prabod Kumary Dassi* (1 Cal. W. N. page 49) discussed.

[24 Cal. page 551.]

(E.) **HEM COOMAREE DASSEE vs. QUEEN EMPRESS.**

Commission in criminal case—Commission to examine witness—Pardanashin lady—Code of Criminal Procedure (Act X of 1882), sections 6, 7, 503, 504, 505, 506, 507—Presidency Magistrate, Power of.

It is doubtful if a Presidency Magistrate in the Town of Calcutta has power to issue a commission under sections 503 to 507 of the Code of Criminal Procedure to examine a witness residing within his own jurisdiction; but there is nothing in the Code to prevent a Presidency Magistrate examining a witness within his jurisdiction at some place other than the Court House. Where a Presidency Magistrate refused, on the ground of want of jurisdiction, to grant a commission for the examination of a pardanashin lady, but offered to take evidence in his Court when cleared for the purpose or in his private room, and she applied to the High Court for a commission being granted, or for such other order as

they might deem proper, the High Court on revision directed that if the lady would take a house or suit of rooms not far from the Magistrate's Court and pay all the cost which the Magistrate deemed reasonable and proper, he should not enforce her attendance in Court, but examine her in the place so appointed, in the presence of the parties concerned, and in the manner in which pardanashin ladies are ordinarily examined.

[24 Cal. page 638.]

(A.) BENBOW vs. BENBOW.

Maintenance, Order of Criminal Court as to—Criminal Procedure Code (Act X of 1882), sections 488 and 177—Complaint by a wife against her husband for maintenance—Issue of summons—Jurisdiction of Presidency Magistrate.

If a person neglects or refuses to maintain his wife, the proper Court to take cognizance of the complaint of the wife is the Court within the jurisdiction of which the husband resides.

[24 Cal. page 638.]

(B.) PAOHKAURI vs. QUEEN-EMPRESS.

Rioting—Unlawful assembly—Right of private defence of property—Causing grievous hurt in furtherance of common object—Penal Code (Act XLV of 1860), sections 97, 99, 147, 149, 325.

The accused, receiving information that the complainant's party were about to take forcible possession of a plot of land which was found by the Court to be in the possession of the accused, collected a large number of men some of whom were armed, and went through the village to the land in question. While they were engaged in ploughing, the complainant's party came up, some of them being armed, and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded and subsequently died, and two of the accused's party were hurt.

Held, that if the accused were rightfully in possession of the land and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required, and using such force or violence as was necessary, to prevent the aggression.

Held, also, that under such circumstances, they could not rightly be held to be members of an unlawful assembly. *Queen-Empress vs. Narsang Pathbbai* (I. L. R. 14 Bom. Page 441). *Birjo Singh vs. Khub Lall* (19 W. R. Cr. 66) and *Shunbur Singh vs. Burmah Mahto* (23 W. R. Cr. 25) followed; *Ganouri Lall Dass vs. Queen-Empress* (I. L. R. 16 Cal. 206) distinguished.

[24 Cal. page 691.]

(C.) BAHABAL SHAH vs. TARAK NATH CHOWDHRY.

Damages, Suit for—Opium Act (Act I of 1878), section 9—Act XIII of 1857—Wrongful entrance and illegal search, Liability of Police Officer for—Code of Criminal Procedure (Act X of 1882), section 155, 156 and 163—Non-cognizable offence.

An offence under section 9 of the Opium Act (I of 1878) is a non-cognizable offence, and is therefore one for which by section 4 of the Criminal Procedure Code a police officer cannot arrest without warrant; and he has therefore under section 156 of the Code no authority to investigate such an offence without the order of a Magistrate; nor under section 163 can he make a search in respect of it. The power of arrest referred to in clause (g) of section 4 of the Criminal Procedure Code is an unqualified power, and not a conditional power, as in section 24 of Act XIII of 1857, which only gives the right to a police officer to arrest without warrant in case the accused does not furnish the security required by that section. Where a police officer, therefore, in respect of an offence under section 9 of the Opium Act, made a search in the house of the accused without an order of a Magistrate.

Held, that his action could not be justified, either under section 24 of Act XIII of 1857, or under the Code of Criminal Procedure, and that he was liable in action for damages for the illegal search.

[24 Cal. page 755.]

(D.) MATA DAYAL vs. QUEEN-EMPRESS.

Registration Act (III of 1877), section 74 and section 82—Sub-Registrar holding inquiry under order of the Registrar—Liability of witness giving evidence in such inquiry to prosecution

An inquiry under section 74 of the Registration Act should be made by the Registrar himself. He cannot delegate his power to any one else. A Sub-Registrar holding such an inquiry under an order of the Registrar cannot be said to be acting in execution of the Registration Act in any proceeding or inquiry under that Act. An order for the prosecution of a witness under section 82 of the Registration Act, who gives evidence before the Sub-Registrar in such an inquiry, is wrong in law.

[24 Cal. page 757.]

(E.) QUEEN-EMPRESS vs. TOMI JUDDI.

Criminal Procedure Code (Act X of 1882), section 148—Order for, and assessment of costs—Power of Magistrate—Delay—Notice to parties.

An order for, and the assessment of, costs under section 148 of the Criminal Procedure Code should be made at the time

of passing the decision under section 145 of the Code in the presence of the parties. Such costs should not be ordered and assessed by the Magistrate after a long interval, and without allowing all the parties affected an opportunity to appear and show cause.

[24 Cal. page 881.]

(A.) TULSI BEWAH vs. SWEENEY.

Prevention of Cruelty to Animals Act (XI of 1890), sections 2 and 3—Crabs—Animals—Cruelty to animals.

The provisions of Act XI of 1890 apply to cruelty exercised towards any animal which is either "domestic" or which being *feroce nature* has been "captured" and is in captivity. Crabs are "animals" within the definition of section 2 of Act XI of 1890. If a person exposes them for sale at a public place with their legs broken and with their shells crushed in so as necessarily to cause them pain, he incurs the penalty prescribed by section 3 of the Act.

[24 Cal. page 885.]

(B.) KANAI LAL GOWALA vs. QUEEN-EMPRESS.

Wrongful Restraint—Penal Code (Act XLV of 1860, sections 79 and 34.—

Mistake of fact—Act done in good faith under belief it is justified by law.

A Court peon accompanied by two of the decree-holder's men (petitioners) went to execute a warrant of arrest against the judgment-debtor M. A *palki* with closed doors was noticed to be coming out of the male apartment of M's house. The petitioners believing that M. was effecting his escape in that *palki* stopped it and examined it, although the persons accompanying the *palki* protested and said there was a lady in it. Admittedly, there was in the *palki* a *pardamashin* lady of rank.

Held, that having regard to the terms of section 79 of the Penal Code, a conviction of the petitioners under section 341 was not right.

[25 Cal. page 20.]

(C.) MUHAMMAD YUSUF-DIN vs. QUEEN-EMPRESS.

✓ Jurisdiction of Criminal Court—Criminal jurisdiction along the Railway through Indian Independent State—Locality of crime—Illegal arrest on lands occupied by the Hyderabad State Railway.

The authority for the exercise of criminal jurisdiction by the Government of India upon

lands within the limits of the Hyderabad State Railway is derived from a grant to that Government in 1887 by His Highness the Nizam as ruler of the territory. The railway lands remain part of his dominions. The grant of civil and criminal jurisdiction contained in the correspondence of that year between the Nizam's Minister and the Resident at Hyderabad is expressed to be "along the line of railway as is the case on other lines running through Independent States." This jurisdiction, notwithstanding any words in the Notification of the Government of India of the 22nd March 1888 (which could not of itself give any authority, or add to that granted by the Nizam), does not justify the arrest on the lands of the Hyderabad State Railway of a subject of the Nizam under the warrant of the Magistrate of a District in British India, on a charge of a criminal offence committed in British India, and unconnected with the Hyderabad Railway administration. The mere presence of the accused on the railway lands, over which criminal jurisdiction had been granted as above, was no legal ground for his arrest under the warrant of the Court in British India, his offence, if committed at all, not having been committed on those lands, and not having been connected with the railway.

[25 Cal. page 207.]

(D.) KASHI NATH NAEK vs. QUEEN-EMPRESS.

Forgery—Abetment of forgery by writing out the deed—Unregistered document purporting to be a valuable security—Penal Code (Act XLV of 1860), sections 109, 114 and 467.

The accused was not only the writer but also took an active part in the preparation of a document, the alleged executant of which was dead before the date of the document, and the person who really had an interest under the document was convicted under section 82 of the Registration Act (III of 1877). But evidence was wanting to shew that the accused took any part in the forgery of the name of the alleged executant.

Held, that the accused could not be convicted of the offence of forgery under section 467 of the Penal Code. There being nothing on the record to show that the accused was a party to, or took any part in, the actual forgery of the document, or that he was present on the occasion when it was forged, the proper section to convict him under would be section 109, that is, of abetment of forgery, and not section 467.

An unregistered document, though it may not be a valuable security until the registration is completed, still "purports" to be a valuable security within the meaning of section 467 of the Penal Code. *Queen-Empress vs. Ramassami* (I. L. R. 12 Mad. page 148) approved.

[25 Cal. page 230.]

(A.) ALI FAKIR vs. QUEEN-EMPRESS.

Charge to Jury—Misdirection by the Judge—
Erroneous verdict owing to misdirection—
Failure of justice—Criminal Procedure
Code (Act X of 1882), sections 418, 423
(d) and 537.

On a charge of rape the Judge in his charge to the jury said, "You will observe that this sexual intercourse was against the girl's will and without her consent, etc., 'instead of saying, as he ought to have done, 'You will have to determine upon evidence in this case, whether the intercourse was against the girl's will, etc.,' and the charge went on in the same style of stating to the jury what had been proved instead of leaving it to them to decide what in their opinion was proved. In the concluding sentence of the charge the Judge said: 'You have seen the witness, and I have no doubt that you will return a just verdict.'"

Held, that such a charge amounted to a clear misdirection, and that the verdict was erroneous owing to such misdirection. Even the concluding sentence did not satisfy the requirements of a proper charge.

The provisions in section 423 (d) and section 537 of the Criminal Procedure Code, do not require that the court is to go through the facts and find for itself whether the verdict is erroneous upon the facts.

[25 Cal. page 233.]

(B.) CHOA LAL DASS vs. ANANT PERSHAD MISSER.

Revision—Power of interference by the High Court—Test as to whether case is of exceptional nature or not—Practice in criminal case.

The High Court will not interfere in a case during its pendency in a subordinate court unless it is of an exceptional nature; and one test of its being of such a nature is that a bare statement of the facts of the case without any elaborate argument should be sufficient to convince the High Court that the case is a fit one for its interference at an intermediate stage. *Chand Pershad vs. Abdur Rahman* (I. L. R. 22 Cal. page 131) discussed.

[25 Cal. page 274.]

(C.) DURGA CHARAN MALI vs. NOBIN CHANDRA SIL.

Penal Code (Act XLV of 1860), section 183—Resistance to attachment—Lawful authority—Village Chaukidari Act (Bengal Act VI of 1870), section 26, section 27 and section 34.

Where a village chaukidar, without the preparation and publication of a list of defaulters, and without any written authority, as required by section 26 and section 27 of the

Village Chaukidari Act (Bengal Act VI of 1870), attached some property for levying the amount of arrears.

Held, that resistance to such attachment was not an offence under section 183 of the Penal Code.

[25 Cal. page 275.]

(D.) QUEEN-EMPRESS vs. BENI MADHAV CHAKRAVARTI.

Penal Code (Act XLV of 1860), section 288—Obstruction in a public way.

The accused was charged generally with obstructing a public way, no danger, obstruction or injury being alleged to have been caused to any person, nor was there any clear evidence that the way was a public way.

Held, that the conviction under section 288 of the Penal Code could not be sustained.

[25 Cal. page 278.]

(E.) PREONATH DEY vs. GOBAR-
DHONE MAILO.

Nuisance—Criminal Procedure Code (Act X of 1882), sections 133 and 137—Reference by Sub-Divisional Magistrate to a second class Magistrate—*Bond fide* question of title—Jurisdiction of Magistrate—Public nuisance—Obstruction in public way.

A Sub-Divisional Magistrate having made a conditional order under section 133 of the Criminal Procedure Code (Act X of 1882) against a person to remove an obstruction on a public thoroughfare, or appear and show cause before a second class Magistrate, the said person appeared as directed, and the order was made absolute under section 137. In revision the High Court held that, having regard to the penultimate paragraph of section 133, the order was not illegal on the ground that it was made absolute by a Magistrate with second class powers other than the Magistrate who made the conditional order. *In re Narasimha* (I. L. R. 9 Mad. 201) approved of. When a question of title is *bond fide* raised the Magistrate ought not to make an order under section 133 and 137 of the Criminal Procedure Code, but should allow the party an opportunity for the determination of the question by a Civil Court. The claim of title must, however, be *bond fide* and not a mere pretence to oust jurisdiction, and it is for the Magistrate to say whether the claim is a *bond fide* one or a pretence. *Luckeenarain Banerjee vs. Ram Coomar Mookerjee* (I. L. R. 15 Cal. 564) and *Queen-Empress vs. Bissessur Sahu* (I. L. R. 17 Cal. 362) followed. Although no length of enjoyment can legalize a public nuisance—see *Municipal Commissioners of Calcutta vs. Mohammed Ali* (7 B. L. R. 499)—yet the long possession or enjoyment of what is said to be a nuisance may give to the objection of the person so possessing or enjoying it the character of a *bond fide* dispute as to title

such as might have the effect of ousting the jurisdiction of the Magistrate under sections 133 and 137 of the Code, and making the question a proper one for the Civil Court.

[25 Cal. page 291.]

(A.) **BHIKU KHAN vs. ZAHURAN.**

Maintenance, Order of Criminal Court as to—Criminal Procedure Code (Act X of 1882), section 488—Imprisonment for default of payment of maintenance—Warrant of commitment—Procedre

An order of commitment to prison for default in payment of a wife's maintenance allowance cannot be made without proof that the non-payment was due to wilful neglect of the person ordered to pay. *Sidheswar Teor vs. Gyanada Dasi* (I. L. R. 22 Cal. 291) followed. The law contemplates a single warrant of commitment in respect of the arrears due at the time of its issue. Where six months' arrears were due an order for separate warrants of commitment awarding a separate sentence of imprisonment of one month on each warrant was therefore held to be bad in law. As to the mode of computing the term of imprisonment, the case of *Allapichai Ravuthar vs. Mohidin Bibi* (I. L. R. 20 Mad. 3) followed.

[25 Cal. page 338.]

(B.) **DEPUTY LEGAL REMEMBRANCER vs. AHMAD ALI.**

Reformatory Schools Acts (V of 1876, sections 2 and 7, and (VIII of 1897), section 1, clauses 2, 3 and 8—Criminal Procedure Code (Act X of 1882), section 3 and section 399—Criminal Procedure Code (Act X of 1872) section 318—General Clauses Consolidation Act (X of 1897) — Effect of the repeal of a repealing statute—Construction of statute.

The accused was convicted of the offence under section 457 of the Penal Code by the Deputy Magistrate of Barisal, who found that the accused was a boy of fourteen or fifteen years, decidedly under sixteen, and passed the following order: "I find Ahmad Ali, boy, guilty of house-breaking by night for the purpose of committing theft, and instead of being imprisoned in the jail under section 457 of the Penal Code, I direct under section 399 of the Criminal Procedure Code and section 7 of Act V of 1876, that Ahmad Ali be confined in the Calcutta Reformatory for two years for training in some branch of useful industry."

Held, that the order could not be sustained under section 7 of Act V of 1876, as that Act had been repealed before the date of the order and the commission of the offence, nor under section 8 of Act VIII of 1897, as the order does not comply with the provisions of the latter Act.

Held, further, the section 318 of the Criminal Procedure Code (Act X of 1872), having been repealed by section 2 of Act V of 1876, the corresponding section 399 of the present Criminal Procedure Code (Act X of 1882) must also be held by virtue of section 3 of the Code to have been repealed in the provinces, including Bengal, to which Act V of 1876 was extended. The repeal of a statute repealing another statute does not revive the repealed statute. The law in India, as embodied in section 7 of the General Clauses Act (X of 1897), is the same as the law in England. *Queen-Empress vs. Madasami* (I. L. R. 12 Mad. 94, and *Queen-Empress vs. Manaji* (I. L. R. 14 Bom. 381 referred to and approved of).

[25 Cal. page 413.]

(C.) **LEGAL REMEMBRANCER vs. CHEMA NASHYA.**

Evidence Act (I of 1872), section 27—Information received from the accused—Statement leading to the discovery of a fact—Admissibility of such statement.

If the statement of an accused person in the custody of the police is a necessary preliminary of the fact thereby discovered, it is admissible under section 27 of the Evidence Act; it is immaterial whether the statement is sufficient to enable the police to make the discovery by themselves, or is only of such a nature as to require further assistance of the accused to enable them to discover the fact. *Empress of India vs. Pancham* (I. L. R. 4 All. 198) dissented from *Queen-Empress vs. Nana* (I. L. R. 14 Bom. 26) followed. *Adu Shikidar vs. Queen-Empress* (I. L. R. 11 Cal. 635) referred to.

[25 Cal. page 416.]

(D.) **NABI BAKSH vs. QUEEN-EMPRESS**

Theft—Removing a thing with the object of causing trouble to the owner—Wrongful loss.

The accused, who was charged by his master with having committed theft of a box, stated that he had removed the box and left it concealed in the cowshed to give a lesson to his master. The Sessions Judge in his charge to the jury said: "If the jury find that the accused removed the box to put the owner to trouble, that is causing wrongful loss to the owner and the act is theft; and the jury returned a verdict of guilty, finding 'that the taking was with the intention of putting the owner to trouble.'"

Held, the above charge and verdict were based on an erroneous view of the law. It cannot be said that removing a thing to put the owner to trouble is necessarily and in every case causing "wrongful loss."

[25 Cal. page 419.]

(4.) CHUNDRA KUMAR DEY vs. GANESH DAS AGARWALLA.

Bengal Municipal Act (Bengal Act III of 1884), sections 237, 238 and 273
—Notice of intention to build—Commencing to build before sanction—Refusal of sanction within the period of six weeks—Liability to fine.

If a person, after giving notice in writing of his intention to erect a house under section 237 of the Bengal Municipal Act (Bengal Act III of 1884) commences to build without waiting for the six weeks mentioned therein [as he is not bound to do under the Act there being no such provision in it], he does not necessarily contravene the law; yet when he so acts, the reasonable view must be that he does it at his risk, his act being liable to be treated as one in contravention of any legal order of the Commissioners issued within the statutory period of six weeks, if such order does not sanction the proposed building; the above appears to be the only reasonable view of section 238 of the Act.

[25 Cal. page 423.]

(B.) BROWN vs. PRITHIRAJ MANDAL.

Criminal Procedure Code (Act X of 1882), section 145—Possession, Order of Criminal Court as to—Parties to proceedings—Manager in possession.

A person who is in possession of land merely as manager for the actual proprietor, should not be made a party to proceedings under section 145 of the Criminal Procedure Code. *Behari Lal Trigunait vs. Darby* (I. L. R. 21 Cal. 915) followed.

[25 Cal. page 425.]

(C.) INDRA NATH BANERJEE vs. QUEEN-EMPRESS.

Nuisance—Cremation—Burning-ghat or cremation-ground—Criminal Procedure Code (Act X of 1882), sections 133, 140, 487—Jurisdiction of District Magistrate to order further inquiry, in a proceeding under section 133 of the Code—"Legalised nuisance"—Private cremation-ground, Duties of owner of—"Public place"—"Trade or occupation"—Order of removal of burning-ghat—Form of Notice

A District Magistrate has strictly speaking, no power under section 437 of the Criminal Procedure Code (Act X of 1882) to order further inquiry into a proceeding under section 133 of the Code, which has been

practically dropped by a Subordinate Magistrate, the proper course being to refer the matter to the High Court. Although a burning-ghat or cremation-ground may not in itself be a "nuisance" within the meaning of clause 2, section 133 of the Criminal Procedure Code (Act X of 1882), still a Magistrate will have jurisdiction to take action under that section if it is shown that such a ghat or ground is in such an offensive state, or that cremation is carried on upon it in such an offensive manner, as to be a source of injury, danger, or annoyance to persons living in the vicinity. *Queen-Empress vs. Saminadha Pillai* (I. L. R. 19 Mad. 464) and *Bamford vs. Turnley* [31 L. J. Q. B. (Ex Ch.) 286] referred to and discussed. *Brindabun Chunder Roy vs. Chairman of Municipal Commissioners of Serampore* (19 W. E. Cr., 309) distinguished. A private proprietor may be guilty of acts done on his private property, which may give rise to a public nuisance; the owner of a cremation-ground may be held to create a "nuisance" if he allows the cremation of bodies upon that ground to be so performed as to annoy or endanger the lives and properties of persons living in the neighbourhood. The proprietor of a cremation-ground cannot be said to be carrying on any "trade or occupation" within the meaning of clause 3, section 133 of the Criminal Procedure Code. A Magistrate has no power under section 133 of the Criminal Procedure Code to order the removal of a burning-ghat from its position, but he can direct a proprietor to "remove the nuisance," i.e., to take such steps as would result in the cremation of corpses ceasing to be a nuisance to the public.

[25 Cal. page 432.]

(D.) QUEEN-EMPRESS vs. MAKUND RAM.

Gambling Act (Bengal Act II of 1867), section 6—Common gaming house—Cowries—Instruments of gaming.

Cowries may be treated as instruments of gaming where they are used as counters or as a means to carry on gaming. The finding of cowries in a house upon search made under a warrant will, under section 6 of the Gambling Act (Bengal Act II of 1867), raise a rebuttable presumption that the house is used as a common gaming house.

[25 Cal. page 434.]

(E.) RAM CHANDRA BORAL vs. JITYANDRA.

Criminal Procedure Code (Act X of 1882), section 522—Restoration of possession of immoveable property—Dispossession by use of criminal force

The words "an offence attended by criminal force" in section 522 of the Criminal Procedure Code (Act X of 1882) mean an offence of which criminal force forms an ingredient. Section 522 is not applicable to cases where there has been no conviction for

iminal force, either separately or as an ingredient of the offence of which there is a conviction, and where there is no finding that any person has been dispossessed of any immovable property by criminal force. *Luchmi Das vs. Pallat Lal*, 23 W. R. Cr. 54) and *Shoshi Bhusan Dutt vs. Pyari Kishore Biswas* (1 C. W. N. 1001) followed.

[25 Cal. page 440.]

(A.) **QUEEN-EMPRESS vs. HAR CHANDRA CHOWDHURY.**

Recognizance to keep peace—Surety bond—Liability to forfeiture—Evidence necessary—Criminal Procedure Code (Act X of 1882), section 514.

The mere fact of the person for whom another stands surety being convicted of a breach of the peace ought not to be sufficient to make the surety bond executed by the latter liable to forfeiture without any evidence taken in the presence of the surety to show that the forfeiture has been incurred. The language of section 514 of the Criminal Procedure Code (Act X of 1882) does not indicate that the final order making a person bound by a bond can be made without taking any evidence in his presence or giving him any opportunity of cross-examining the witnesses on whose evidence the forfeiture is held to be established. The mere production of the original record or of a certified copy of the original record of the trial in which the principal had been convicted of breaking the peace within the period covered by a bond would not be conclusive, if indeed it would be any evidence, against the surety in a proceeding under section 514 of the Criminal Procedure Code.

[25 Cal. page 454.]

(B.) **CHAIRMAN OF THE SERAMPORE MUNICIPALITY vs. INSPECTOR OF FACTORIES, HOOGHLY.**

Factories Act (XV of 1881) as amended by (Act XI of 1891), section 15 (g) and proviso (1) 17—Bengal Municipal Act (Bengal Act III of 1884), sections 320, 321—Liability for neglecting to keep a factory in a cleanly state—Criminal Procedure Code (Act X of 1882), section 557—Nuisance—Sanction.

The Inspector of Factories having found the latrine of the Hastings Mill within the Serampore Municipality in a filthy state, instituted a prosecution against the manager of the mill, but the prosecution failed. He then prosecuted as representing the Municipal Commissioners of Serampore the Chairman of the Municipality, who, on conviction, was fined Rs. 200 for "neglecting to keep the factory free from affluvia arising from a privy," under the provisions of the Factories Act and of the Bengal Municipal Act, section 320.

Held, that the conviction of the Chairman was unsustainable on the finding that the Municipality and the occupier of the factory were jointly responsible.

Held, further, that it lay upon the occupier of the factory, as being primarily liable for breach of any of the provisions of the Factories Act, to give the strictest proof of circumstances exonerating himself from the liability in order to fix it on any other person.

[25 Cal. page 483.]

(C.) **CORPORATION OF CALCUTTA vs. EASTERN MORTGAGE AGENCY CO., LD.**

Calcutta Municipal Consolidation Act, section 87 and schedule II, Rule 7, clause (6)—License tax—Liability to tax of Company carrying on business through Agents in Calcutta and not having a registered place of business.

A joint-stock company carrying on money-lending business through agents in Calcutta, where it has no registered place of business, is liable to pay license tax under section 87 and Schedule II of the Calcutta Municipal Act of 1888. *Corporation of Calcutta vs. Standard Marine Insurance Company* (1 L. R. 22 Cal., 581) distinguished.

[25 Cal. page 492.]

(D.) **LUTFUR RAHMAN NUSKUR vs. MUNICIPAL WARD INSPECTOR.**

Calcutta Municipal Consolidation Act (Bengal Act II of 1888), sections 381, 382—Burial ground—Certificate for closing a burial ground, Requisites of.

The Municipal authorities issuing a certificate under the provisions of section 381 of the Calcutta Municipal Act (Bengal Act II of 1888), prohibiting the use of a burial ground, must definitely specify the point of time from which the period fixed by them under that section is to run.

[25 Cal. page 12.]

(E.) **QUEEN-EMPRESS vs. ABBAS ALI.**

Forgery—Using a forged document—Penal Code (Act XLV of 1860), sections 463, 471—"raudulently," Meaning of.

Deprivation of property, actual or intended, is not an essential element in the offence of fraudulently using as genuine a document which the accused knew or had reason to believe to be false—*Queen-Emress vs Haradhan* (1 L. R. 19 Cal. 380) overruled.

[25 Cal. page 556.]

(A.) SURJA KURMI *vs.* QUEEN-
EMPRESS.

Jury, Irregularity in trial of case by—Trial by Jury of an offence triable with assessors—Criminal Procedure Code (Act X of 1882), sections 306, 307, 536—Penal Code (Act XLV of 1860), sections 240, 241—Government Notification of 1862

The accused was tried by a jury for an offence triable with the aid of assessors, and the jury by a majority found him "not guilty." The Sessions Judge, who disagreed with the verdict, convicted the accused, treating the verdict of the jury as the opinion of assessors.

Held, that the conviction was bad, inasmuch as the case was validly "tried by a jury" within the meaning of section 536 of the Criminal Procedure Code (Act X of 1882), and the trial was complete when the jury had returned their verdict; and that the Judge was bound, under the circumstances, either to give judgment in accordance with the verdict or, if he disagreed with it, to submit the case for orders of the High Court as provided by sections 306 and 307 of the Code. In the matter of Bhoot Nath Dey (4 C. L. R. 405) followed. A reference under section 307 of the Criminal Procedure Code should be made when the Judge is "clearly of opinion" that he should do so for the ends of justice.

[25 Cal. page 557.]

(B.) DAITARI DAS *vs.* QUEEN-
EMPRESS

Criminal Procedure Code (Act X of 1882), section 35—Sentence—Concurrent sentence of imprisonment—Penal Code (Act XLV of 1860), section 409.

Sentences of imprisonment passed for distinct offences to run concurrently are not warranted by law. *Queen-Empress vs. Wazir Jan* (I. L. R. 10 All. 58) referred to.

[25 Cal. page 559.]

(C.) DOLEGOBIND CHOWDHRY *vs.*
DHANU KHAN.

Criminal Procedure Code (Act X of 1882), sections 107, 145—Disputes concerning land—Procedure—Recognizance

Where a dispute likely to cause a breach of the peace exists concerning possession of land, proceedings under section 145, and not under section 107, of the Criminal Procedure Code should be instituted.

[25 Cal. page 561.]

(D.) BIRU MANDAL *vs.* QUEEN-
EMPRESS.

Jury, Verdict of—Charge to Jury—Misdirection—Criminal Procedure Code (Act X of 1882), sections 297, 425 (d)—Effect of omission to explain the law to Jury—Penal Code (Act XLV of 1860), sections 143, 147, 380, 395—Practice.

In a trial by jury, the accused were charged with offences under the Penal Code. The Judge, while charging the jury, omitted to explain the law by which they were to be guided. The jury returned a verdict of *guilty* on all counts except one, and the Judge agreeing with the verdict convicted the accused.

Held, that the omission to explain the law to the jury amounted to a misdirection vitiating the verdict within the meaning of section 423 (d), Criminal Procedure Code. *Wafadar Khan vs. Queen-Empress* (I. L. R. 21 Cal. 965) relied upon. Some statement should appear in the record of a trial by jury to show that the law bearing upon the charges has been explained to the jury.

[25 Cal. page 635.]

(E.) ABHOY CHARAN DASS *vs.* MUNI-
CIPAL WARD INSPECTOR.

Calcutta Municipal Consolidation Act (II of 1888, B. C.), sections 307, 335, 336, Schedule II, Rule 6—Liability for keeping animals without license—Penalty, to whom attached—Owner—Lessee.

The petitioners, as owners, let out a stable on hire, where *tacca gharries* and horses were kept by the lessee without taking out a license from the Municipal Commissioners. The petitioners were convicted under sections 307 and 336 of the Calcutta Municipal Act (II of 1888, B. C.) for having permitted offensive matters, &c., and animals to be kept on the premises in contravention of the provisions of section 335 of the Act.

Held, that the convictions were bad, the lessee alone being answerable in such a case for disregarding the provisions of the Act. The penalty, under section 336 of the Calcutta Municipal Act of 1888, attaches to the owner of any land for permitting any animals to be kept thereon when he has direct possession of the land, and not when he has leased it out to another.

[25 Cal. page 628.]

(F.) SUBAL CHUNDER DEY *vs.* RAM
KANAI SANYASI.

Recognizance to keep peace—Criminal Procedure Code (Act X of 1882), section 106—Security to keep the peace on conviction—Breach of the peace—Penal Code (Act XLV of 1860), section 448—House-trespass.

An order under section 106 of the Criminal Procedure Code (Act X of 1882) binding

down the accused to keep the peace, upon conviction for "house trespass" under section 448 of the Indian Penal Code, cannot stand where the intention of the accused for committing the trespass was to have illicit intercourse with the complainant's wife. The *Queen vs. Gendoo Khan*, (7 W. R. Cr., 14) and the *Queen vs. Jhapoo*, (20 W. R. Cr., 37) distinguished. It is necessary, before an order under section 106 of the Criminal Procedure Code can be made, that the accused should have an opportunity of answering to an accusation for an offence of the kind, upon a conviction for which such an order can be made

[25 Cal. page 630.]

(A.) **RAM CHANDRA MISTRY vs. NOBIN MIRDHA.**

Appeal in Criminal case—Criminal Procedure Code (Act X of 1882), sections 404, 520, 522—Order as to restoration of immoveable property—Jurisdiction of Appellate Court to reverse such an order.

There is no appeal from an order restoring possession of immoveable property under section 522 of the Criminal Procedure Code (Act X of 1882), nor can such an order be regarded as an integral part of the judgment appealed from, so as to stand or fall according as the judgment is upheld or reversed. *Basudeb Surma Gossain vs. Naziruddin* (1 L. R. 14 Cal. 834), *Queen-Empress vs. Fattah Chand* (1 L. R. 24 Cal. 499), *in re Annapurna Bai* (1 L. R. 1 Bom. 630), and *Rodger vs. Comp-toir D'Escompte de Paris* (L. R. 3 F. C. 465) referred to.

[25 Cal. page 637.]

(B.) **LAL MOHAN CHOWBEY vs. HARI CHARAN DAS BAIRAGI.**

Act XIII of 1859, sections 1, 4—Breach of Contract—Jurisdiction of Presidency Magistrates—"Magistrate of Police"—Criminal Procedure Code (Act X of 1882), section 3.

A Presidency Magistrate of Calcutta may lawfully take cognizance, under section 1 of Act XIII of 1859, of a complaint in respect of a contract made in Calcutta, the breach of which has been committed beyond the local jurisdiction of his Court. The expression "Magistrate of Police" in section 1, Act XIII of 1859, means "Presidency Magistrate."

[25 Cal. page 639.]

(C.) **YUSUF MAHOMED ABARUTH vs. BANSIDHUR SIRAOGI.**

Jurisdiction to try offence under section 486 of the Penal Code (Act XLV of 1860)—Goods with counterfeit trade mark not intended to be sold within jurisdiction

A Magistrate has jurisdiction to try an offence under section 486 of the Penal Code, if the accused be shown to be in possession of goods with a counterfeit trade mark for sale

or any purpose of trade or manufacture, though the sale or the trade or the manufacture for the purpose of which the accused has the goods in his possession be not intended to take place within the jurisdiction of the Court in which the complaint is lodged.

[25 Cal. page 711.]

(D.) **TAJU PRAMANIK vs. QUEEN-EMPRESS.**

Charge to the Jury—Misdirection—Criminal Procedure Code (Act X of 1882), section 423—Setting aside verdict of the Jury—Power of Appellate Court to deal with the case.

It is the duty of the Judge to call the attention of the jury to the different elements constituting the offence and to deal with the evidence by which it is proposed to make the accused liable. Failure to do so amounts to misdirection. *Queen-Empress vs. Balya Somya* (1 L. R. 15 Bom. 369) followed. Statements by some of the accused persons, which do not amount to a confession, and which do not in any way incriminate them, are not admissible in evidence against any persons other than those making them. Omission to direct the jury that in dealing with the evidence against the accused other than those making the statements they are not to take into consideration such statements, also amounts to misdirection. If the verdict of the jury is set aside on any of the grounds mentioned in clause (d) of section 423 of the Criminal Procedure Code (Act X of 1882), then there is no restriction on the powers of the Appellate Court to deal with a case of which it has complete seizin in any of the manners provided in that section. The law nowhere lays down that when the verdict of the jury is set aside, the Court must necessarily direct a new trial. *Wafadur Khan vs. Queen-Empress* (1 L. R. 21 Cal. 955) dissented from. The course adopted in *Queen-Empress vs. O'Hara* (1 L. R. 17 Cal. 642), *Regina vs. Naoroji Dadabhai* (9 Bom. H. C. 358), and *Queen-Empress vs. Haribole Chunder Ghose* (1 L. R. 1 Cal. 207) followed.

[25 Cal. page 727.]

(E.) **THE LEGAL REMEMBRANCER vs. BHAIKAB CHANDRA CHUCK-ERBUTTY.**

Transfer of criminal case—Criminal Procedure Code (Act X of 1882), section 526, clause (e)—Expression of belief by the District Magistrate—Fairness and impartiality of the Jury—Jury an important part of the tribunal.

When two such officers, as the District Magistrate and the Sessions Judge, emphatically express their belief that it will be next to impossible to obtain a fair and impartial trial if the case be heard before a jury chosen from a particular district, the bare expression of such belief, quite apart from the foundations thereof, must shake the confidence of the

parties interested and of the public in the fairness and impartiality of the particular jury to try the case. An order for transfer in such cases is expedient for the ends of justice under section 526, clause (e), of the Criminal Procedure Code. The importance of securing the confidence of parties in the fairness and impartiality of the tribunal is next only to the importance of securing a fair and impartial tribunal. *Dupeyron vs. Driver* (I. L. R. 23 Cal. 495) followed. The jury in a case triable by jury constitute a part and an important part of the tribunal. It is not quite reasonable to say, where doubt is entertained as to the fairness and impartiality of the jury, that the trial should, nevertheless, go on before such a jury, because an erroneous verdict may, in the end, be set right by the High Court. *Empress vs. Nabo Gopal Bose* (I. L. R. 6 Cal. 491) distinguished.

[25 Cal. page 786.]

(A.) *ABBAS KHADA vs. QUEEN-EMPRESS.*

Misdirection—Charge to the Jury—Explaining the law—Evidence Act (I of 1872), section 126—Communications to mukhtars privileged—Admission of inadmissible evidence.

In charging a jury it is incumbent on the Judge to explain the law to them in order to assist them in applying the law to the facts of the case. Mere reference to sections of the Penal Code defining the offences is not sufficient. The restrictions imposed by section 126 of the Evidence Act, in respect of what are known as privileged communications, extend also to communications made to mukhtars when acting as pleaders for their clients. In cases tried by jury it is the duty of the Judge to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties. Evidence relating to proposals of compromise ought not, in the exercise of a proper discretion, to be allowed to go in as evidence of guilty knowledge against the accused.

[25 Cal. page 798.]

(B.) *DRIVER vs. QUEEN-EMPRESS.*

Criminal Procedure Code (Act X of 1882), sections 107 and 118—Wrongful act likely to occasion a breach of the peace—Practice—Rule issued upon the Magistrate—Right to appear of a party interested in the result.

The granting of leases to tenants of land not in one's possession does not constitute a wrongful act as section 107 of the Criminal Procedure Code (Act X of 1882) contemplates. Where the notice directs a person to show cause why he should not be bound down to keep the peace, it is improper to make an

order directing him to execute bonds for his good behaviour. When a rule is issued upon the Magistrate to show cause and the order sought to be set aside is one that is only intended to secure the peace of the District by binding down the petitioner, the Magistrate is the only party entitled to be heard. Any other party interested in the result of the order cannot appear.

[1 Oudh Case page 1.]

(C.) *RAM NARAIN vs. QUEEN-EMPRESS.*

Section 395, Indian Penal Code—Presumption of dacoity—Possession of stolen property.

There was no evidence of identification of prisoner at the time of the dacoity. But soon after the occurrence, part of the stolen property was found in his possession.

Held, that the recent possession by the prisoner of property stolen at the dacoity justified the presumption, in the absence of any good rebutting evidence, that the prisoner took part in it.

[1 Oudh Case page 4.]

(D.) *RAM ADHIN vs. QUEEN-EMPRESS.*

Section 366, Indian Penal Code—Kidnapping of two girls—Separate sentences

The prisoner was convicted of the offence of having kidnapped two girls and sentenced by the Sessions Judge to transportation for life and Rs. 10 fine.

Held, that the offence of kidnapping were separate and the prisoner should have been separately sentenced.

[1 Oudh Case page 84.]

(E.) *QUEEN-EMPRESS vs. BHARAT SINGH AND OTHERS.*

Dacoity, section 396, Indian Penal Code—section 289, Act X of 1882 [Code of Criminal Procedure]—'No evidence'—Examination of accused, section 342, Criminal Procedure Code.

In a dacoity case, the Sessions Judge recorded the evidence of the witnesses for the prosecution; and without examining the accused persons, considering that there was no evidence against them, acquitted them.

Held, that 'no evidence,' in section 289 Criminal Procedure Code, means "no legal evidence or proof" and not "no evidence worthy of belief," that the accused should be examined under section 342 of the Code and called on to enter on their defence. (Select Case No. 274 referred to).

[1 Oudh Case, page 85.]

(A.) *QUEEN-EMPRESS vs. BHUP SINGH AND OTHERS.*

Trial before Court of Session—Act X of 1882 (Criminal Procedure Code), sections 287, 289 and 342—Acquittal without taking the whole evidence tendered by prosecution—Retrial.

In a dacoity case, the Sessions Judge, after taking part of the evidence for the prosecution, and considering that the offence against the accused persons, whom he did not examine, was not proved, refused to take further evidence, and after recording the opinions of the assessors, acquitted the accused.

Held, that the rules of procedure laid down in sections 287, 289 and 342 of the Code of Criminal Procedure must be followed; and that, under the circumstances, the order of acquittal must be quashed, and the accused retried according to law.

[21 Mad. page 63.]

(B.) *QUEEN-EMPRESS vs. MAHALIN. GAM SERVAL.*

Abkari Act (Madras)—Act I of 1886, sections 56, 64—Holder of a license and his servants.

The words "being holder of a license" in Abkari Act, section 56, must be taken to include any person in the employ, or for the time being acting on behalf of the holder of a license.

[21 Mad. page 78.]

(C.) *QUEEN-EMPRESS vs. TIRU. CHITTAMBALA PATHAN.*

Penal Code—Act XLV of 1860, section 183—Resistance to the taking of property—Attachment of goods not being property of judgment-debtor.

A decree having been passed against the assets of a deceased debtor, execution was taken out and the officer of Court proceeded to seize certain goods. The accused successfully resisted the seizure asserting that the goods seized were his own. He was thereupon charged with having committed an offence under the Penal Code, section 183, but he was acquitted for want of proof by the prosecution that the goods were assets of the deceased.

Held, that the acquittal was wrong and should be set aside.

[21 Mad. page 83.]

(D.) *QUEEN-EMPRESS vs. RAMAN.*

Confessional statements of accused—Subsequent retraction—Criminal Procedure Code, section 103—Search by Police of stolen property—Charge to Jury.

It cannot be laid down as an absolute rule of law that a confession made and subsequently

retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. A jury should be asked with reference to such confessions, not whether they were corroborated by independent evidence, but whether having regard to the circumstances under which they were made and retracted and all the circumstances connected with them, it was more probable that the original confessions or the statements retracting them were true. Criminal Procedure Code, section 103, does not justify the view that the persons called upon to witness a search are to be selected by any person other than the officer conducting the search. If the Sessions Judge considers that the evidence of an Inspector of Police is necessary, he ought not to animadvert on his absence in charging the jury; but he should intimate his opinion to the Public Prosecutor and give him the opportunity of calling that official. It is wrong for a Judge in charging the jury to say that a Head Constable committed a breach of the police regulations in conducting a search with a loose shirt on, without examining him on the matter and taking evidence as to whether or not his body was examined, before he began the search.

[21 Mad. page 114.]

(E.) *QUEEN-EMPRESS vs. RAMA-SAMI.*

Criminal Procedure Code—Act X of 1882, section 419—Presentation of criminal appeal.

A petition of appeal under the Criminal Procedure Code is not duly presented when, having been signed by a pleader, it is handed in by a person who is not his clerk and over whose conduct and actions he has no control.

[21 Mad. page 124.]

(F.) *QUEEN-EMPRESS vs. SRINIVASA LU NAIDU.*

Criminal Procedure Code—Act X of 1882, sections 195 (b) 423, 439 and 476—Whether a High Court in revision can revoke an order of a Subordinate Court under section 476, Code of Criminal Procedure.

A High Court, as a Court of Revision, has power, under section 439, to revoke an order made by a subordinate Court under section 476 of the Code of Criminal Procedure.

[21 Mad. page 237.]

(G.) *ADIKKAN vs. ALAGAN.*

Criminal Procedure Code—Act X of 1882, sections 211, 217 and 560.

A Magistrate, in acquitting persons accused on a charge of theft which he found to be false and malicious, awarded compensation to each of them to be paid by the complainant.

Subsequently, one of the accused applied for sanction to prosecute the complainant for bringing a false charge under Penal Code, section 211, and certain of his witnesses for the offence of giving false evidence under section 193.

Held, that the order granting sanction was not illegal as regards the complaint by reason of the previous award of compensation.

[21 Mad page 246.]

A.) KARUPPANA NADAN vs CHAIRMAN, MADURA MUNICIPALITY.

Criminal Procedure Code—Act X of 1882, sections 16, 350—Bench of Magistrates—District Municipalities Act (Madras)—Act IV of 1884, sections 263, 264.

A trial on the charge of making an encroachment upon public land under District Municipalities Act (Madras), 1884, sections 167, 263 and 264 was begun before a Bench of seven Magistrates, ended in a conviction by five of the Magistrates in the absence of the other two. It appeared that the Municipal Council had passed no resolution under District Municipalities Act, section 264.

Held, that on the facts of the case the conviction under section 263 was right, and that it was not invalidated by the absence at the end of the trial of two of the Magistrates before whom it had begun. *Quære*: Whether a charge under section 264 would lie in the absence of a resolution passed by the Municipal Council.

[21 Mad. page 249.]

(B.) QUEEN-EMPRESS vs SUBBA NAIK.

Penal Code (Act XLV of 1860), sections 302, 304 and 324—Good faith—Order of superior officer—Firing on an unlawful assembly.

A caused crops to be sown on land as to the enjoyment of which there was a dispute between her and B. Persons having proceeded to reap the crops on behalf of B, the servants of A, went to the place with the station-house officer and some constables who were armed. The station-house officer ordered the reapers to leave off reaping and to disperse, but they did not do so; he then told one of the constables to fire, and he fired into the air. Some of the reapers remained and assumed a defiant attitude. The station-house officer without attempting to make any arrests and without warning the reapers that if they did not desist from reaping, they would be fired at, gave orders to shoot, and one of the constables fired and mortally wounded one of the reapers. It was found that neither the station-house officer nor the last-mentioned constable believed that it was necessary for the public security to disperse the reapers by firing on them: *Held*,

that the station-house officer and the constable, were not acting in good faith and that the order to shoot was illegal and did not justify the constable, and that both he and the station-house officer were guilty of murder.

[21 Mad. page 253.]

(C.) QUEEN-EMPRESS vs. AYYAI KANNU MUDALI.

District Municipalities Act (Madras)—Act IV of 1884, section 189—Keeping a private cart-stand without a license.

It is not necessary, in order to establish the offence of using a place as a cart-stand without a license under District Municipalities Act IV of 1884 (Madras), section 189, to prove that the cart stand is offensive or dangerous or that fees are levied there.

[21 Mad. page 296.]

(D.) QUEEN-EMPRESS vs POOMALA UDAYAN.

Local Boards Act (Madras)—Act V of 1848, sections 77, 78, 8, 94, 163—Penal Code (Act XLV of 1860), sections 99, 186, 353—Service of notice of demand of house-tax—Omission to fill up the house-register completely—Illegal distraint—Resistance to distraining officer.

A notice of demand of a house-tax under the Local Boards Act V of 1848 (Madras) was affixed to the house. The owner, who was a potter and cultivator by occupation, was in the village at the time. He did not pay the tax. A warrant of distress was issued, the house-register not having been completely filled up, and a bucket and spade belonging to the defaulter were attached. The defaulter successfully resisted the distraint: *Held*, that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice, and the fact that the spade and the bucket were protected from attachment under section 94 did not justify the resistance, and accordingly that the defaulter was guilty of offences under Penal Code, sections 186 and 353.

[21 Mad page 428.]

(E.) QUEEN-EMPRESS vs. TIRUVEN-GADA MUDALI.

Local Boards Act (Madras)—Act V of 1848, section 43—Public servant—Sanitary Inspector.

A Sanitary Inspector appointed by the local board is a public servant within the meaning of Local Boards Act, Madras, 1848, section 43.

[21 Mad. page 490.]

(A.) QUEEN-EMPRESS vs. RAMALIN GAM.

Reformatory Schools Act—Act VIII of 1897 section 8—Reformatory Schools Act—Act V of 1876, section 22—Period of detention in reformatory—Rules under Act VIII of 1876.

Held, by Shephard, Offg. C. J., affirming the judgment of Moore, J. (Davies, J., *dis.*), that the rules made by Government under Act V of 1876 must be deemed to have been made under Act VIII of 1897; and that Magistrates acting under Act VIII of 1897 must order the detention of a juvenile offender until he attains the age of eighteen.

[22 Bom. page 317.]

(B.) In re RANCHHODDAS.

Pleader—Responsibility of, in conduct of case—Suspicious document used in a case—"Guilty knowledge"—Indian Penal Code (Act XLV of 1860), section 471—Sanction for prosecution.

Sanction was given for the prosecution of a pleader who in the conduct of a case had presented to the Court for his clients a document of suspicious appearance and which his clients were charged with having forged. The sanction was granted by the Sessions Judge on the ground that the document bore on its face such marks of concoction that the pleader's suspicions must have been aroused at the first sight of it, and that had he examined it, as he ought to have done, he would either have rejected it, or have advised his client to produce it in Court at his own risk. (On appeal to the High Court:

Held, that the sanction should be revoked. A pleader is under no higher obligation than any other agent would be, and to justify his prosecution it should be shown that he had been a party (principal or accessory) to the concoction of the document, or that he had the knowledge that it was concocted.

The mere fact that his suspicions ought to have been aroused by the sight of the document was *prima facie* evidence that he knew, or had reason to believe, the document to be forged.

[22 Bom. page 438.]

(C.) IMPERATRIX vs. NARAYAN.

Criminal Procedure Code (Act X of 1882), section 545—Compensation—Injury caused by the offence committed—Indirect consequences resulting from the offence.

Compensation for loss caused by inability of the complainant to attend to his work on account of his time being taken up with the prosecution of the accused, cannot be ordered to be paid under section 545 of the Code of Criminal Procedure (Act X of 1882), which deals with expenses incurred in the prosecution and with compensation for the injury only.

[22 Bom. page 525.]

(D.) IMPERATRIX vs. VANMALL.

Easement—Entry on land in order to repair—Dominant and servient owners, rights and liabilities of—Indian Easement Act (V of 1882), section 24, ill.)—Right of entry—Indian Railway (IX of 1899), section 122.

The Rajnagar Spinning, Weaving and Manufacturing Company had a mill on one side of the B. B. & C. I. Railway and a spinning factory on the other. To bring water from the mill to the factory a pipe had been laid beneath the railway line, and brick reservoirs at each side to preserve the proper level of the water. Servants of the company having entered on the railway premises to repair the pipe and reservoirs, without having first obtained the permission of the Railway Company, were convicted by a Magistrate under section 122 of the Indian Railway Act (IX of 1890) of an unlawful entry upon a railway. It was proved that the repairs were necessary;

Held, reversing the convictions and sentences, that as the pipes and reservoirs belonged to the Spinning and Weaving Company and were kept in repairs by them, they, as owners of the dominant tenement, had a right to enter on the premises of the Railway Company, the owners of the servient tenement, to effect any necessary repairs, and that the entry in question, being in the exercise of a right, could not be called unlawful.

[22 Bom. page 528.]

(E.) BAL GANGA DHAR TILAK vs. QUEEN-EMPRESS.

Privy Council—Leave to appeal—Refusal of leave to appeal from a conviction and sentence—Alleged misdirection to a Jury—Indian Penal Code (Act XLV of 1860), section 124A.

The petitioner applied to the Privy Council for leave to appeal from a verdict finding him guilty on a charge under section 124A of the Indian Penal Code (Act XLV of 1860).

Held that, consistently with the rules hitherto guiding the Judicial Committee in recommending the grant of leave to appeal from convictions in criminal cases, the petitioner's case was not one in which leave should be granted.

✓ [22 Bom. page 596.]

(F.) IMPERATRIX vs. JIJIBHAI GOVIND.

Criminal Procedure Code (Act X of 1882), section 162—Statements of witnesses before Police not admissible against accused—Evidence.

The positive prohibition under section 162 of the Criminal Procedure Code (Act X of

1882), viz., that statements to the police other than dying declarations shall not be used in evidence against the accused, cannot be set aside by reference to section 157 of the Evidence Act (I of 1872).

[22 Bom. page 549.]

(A.) *IMPERATRIX vs. SADASHIV.*

Criminal Procedure Code (Act X of 1882), sections 497, 528,—Transfer of case—Notice to accused—Bail—Order admitting to bail not revisable by District Magistrate—Practice.

An order under section 528 of the Criminal Procedure Code (Act X of 1882) transferring a case for inquiry or trial from one Magistrate to another ought not to be made without notice to the accused.

An order admitting an accused person to bail made by a Magistrate, is not revisable by a District Magistrate. If the latter considers the order wrong, he can refer it to the High Court.

[22 Bom. page 708.]

(B.) *In re RANGU.*

Municipality—Bombay District Municipal Act (Bombay Act VI of 1873), section 84, as amended by Bombay Act II of 1884—Arrears of rent—Penalty in addition to arrears of rent cannot be imposed.

Section 84 of the Bombay District Municipal Act (Bombay Act VI of 1873) allows penalties to be imposed in addition to arrears of cesses or taxes, but it does not provide for the imposition of a penalty in addition to the arrears of rent.

[22 Bom. page 709.]

(C.) *In re JAGU SANTRAM.*

Municipality—Bombay District Municipal Act (Bombay Act VI of 1873), section 84—Contract to collect a tax levied by a Municipality—Money due under such contract not recoverable under the section.

A person who had obtained a contract to collect a certain tax imposed by District Municipality, having failed to pay over the money due under the contract at the stipulated time, was convicted by a Magistrate under section 84 of the Bombay District Municipal Act (Bombay Act VI of 1873) and ordered to pay it to the Municipality with interest, and also to pay a fine and court-fee charges.

Held, reversing the order, that the section did not apply.

[22 Bom. page 711.]

(D.) *In re SAMSUDIN*

Practice—Procedure—Complaint of offences under sections 182 and 500 of the Penal Code (Act XLV of 1860)—Necessary sanction not obtained—Withdrawal of complaint—Discharge of accused—Fresh complaint lodged on same charge—Effect of previous discharge of accused—Criminal Procedure Code (Act X of 1882), sections 248, 253 and 403

A complaint was lodged against the accused, charging him with offences under sections 182 and 500 of the Penal Code (Act XLV of 1860). The complainant's solicitor, finding that no sanction had been obtained as required by section 195 of the Criminal Procedure Code (Act X of 1882) for proceeding with the charge under section 182, applied to the Magistrate for leave to withdraw the complaint which the Magistrate granted, adding to his order the words "accused is discharged."

The complainant having subsequently obtained the requisite sanction, filed a fresh complaint on the same charges. It was objected on behalf of the accused that the accused had been acquitted under section 248 of the Criminal Procedure Code (Act X of 1882) and that further proceedings were now barred under section 403. The Magistrate allowed the objection and stopped the proceedings. On application to the High Court:

Held, that the order of the Magistrate should be reversed and the complaint investigated. The order stopping the proceedings would be legal only if the accused had been acquitted by a Court of competent jurisdiction, which was not the case, as the Magistrate could not take cognizance of the charge under section 182 of the Penal Code (Act XLV of 1860) without a sanction having been previously obtained.

As to the charge under section 500 of the Penal Code (Act XLV of 1860) the proper procedure in respect of it was that prescribed for warrant cases. The only legal order that could be made in such a case was an order of discharge under section 253 of the Criminal Procedure Code (Act X of 1882) and not of acquittal, and it was an order of discharge that was actually made.

[22 Bom. page 714.]

(E.) *In re SULEMANJI GULAM HUSEN.*

Criminal Procedure Code (Act X of 1882), section 133—Excavations near a public place—Magistrate's power to order the excavations to be fenced, and not to be filled up.

Under section 133 of the Criminal Procedure Code (Act X of 1882) a Magistrate has no power to order excavations adjacent to a public way or any public place to be filled up; he can only order them to be fenced.

[22 Bom. page 715]

(A.) *In re* HUKUMPURIBAVA
GOSAVI.

Police—District Police Act (Bombay Act IV of 1890), section 48, cl (a) (1)—Construction—Procession—Orders as to conduct of procession.

A District Superintendent of Police issued a notification to the following effect:—"No member of any sect can be permitted to proceed naked to the *tirth* to bathe, nor while there to bathe naked, nor to pass the streets naked on any account. If any one does this, he will be dealt with according to law."

Held, that this notification was not illegal or *ultra vires*. It was not any order or command as to costume, but merely a warning to the people that an indecent exposure of the person was an offence under the law and would be dealt with as such.

[22 Bom. page 717.]

(B.) *In re* BASTOO DUMAJI.

Criminal Procedure Code (Act X of 1882), section 545—Compensation—Award of compensation illegal where no fine is inflicted.

Where an accused is discharged and no fine is imposed, no order for payment of compensation can be legally passed under section 545 of the Criminal Procedure Code (Act X of 1882).

[2 Bom. page 739.]

(C.) MANOCKJI *vs.* THE BOMBAY
TRAMWAY COMPANY.

Tramways Act (Bombay Act I of 1874), section 24—"Regulating the travelling"—Meaning of the words—Regulation made under the section for regulating the conduct of the Company's servants—Illegality of such regulation.

The words "regulating the travelling" in section 24 of the Bombay Tramways Act (Bombay Act I of 1874) mean laying down rules as to how persons shall travel, that is to say, rules for the conduct and behaviour of the persons who travel, and cannot be held to include rules for the conduct of the Company's servants, prescribing what they shall do, or what they shall not do, in the matter, for instance, of issuing tickets.

Section 24 of Bombay Act I of 1874 authorises the Bombay Tramway Company to make regulations "for regulating the travelling in or upon any carriage belonging to them." Under this section the Company made the following regulation:—

"Any conductor who shall neglect to issue a ticket to a passenger, or shall issue to such passenger a ticket bearing a number other than one of the numbers contained in such

books, or shall issue a ticket of a lower denomination than the amount of the fare, or non-consecutive in number, or a ticket other than the ticket provided by the Company for the journey to be travelled,—shall for every such offence be liable to a penalty not exceeding Rs. 25."

Held, that the regulation was *ultra vires*.

[22 Bom. page 742.]

(D.) *In re* NAHALCHAND.

Police—Bombay District Police Act (Act VII of 1867), section 33—"Booth"—Meaning of the word—Structure contemplated by the section must be constructed on a public road and must cause nuisance to the public—Construction.

The accused had a house on each side of a public road. On the occasion of a wedding he put bamboos across the street from the top windows of one house into the top windows of the other house, and laid a covering of cloth over the bamboos, thus making a canopy, or awning, over the street. It was at such a height that no obstruction or inconvenience whatever was caused to persons or animals passing along the street. The accused erected the structure without the permission of a Magistrate or Municipal Commission.

For this act the accused was convicted by a Magistrate under section 33 of the Bombay District Police Act (Bombay Act VII of 1867) and sentenced to pay a fine of Rs. 5.

Held, reversing the conviction and sentence, that the structure erected by the accused was not a "booth" within the meaning of section 33 of Bombay Act VII of 1867. The structure contemplated by the section must be on the road itself and cause some nuisance to the public. As no part of the structure in question touched the road, it could not be said to have been constructed on the road.

[22 Bom. page 745.]

(E.) QUEEN-EMPRESS *vs.* BAI VAJU.

Gaming—Prevention of Gambling Act (Bombay Act IV of 1887), sections 4, 5 and 7—Proof of keeping or of gaming in a common gaming-house—Presumption—Evidence.

A number of persons were found by the police in a closed room in the upper-storey of a house gambling with dice and having cowries and money before them. They were convicted under Bombay Act IV of 1887.

Held, confirming the conviction, that under section 7 of the Act the facts found were evidence (until the contrary was shown) that the room was used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming.

[22 Bom. page 746.]

(A.) **QUEEN-EMPRESS vs. ROSS**

Police—Bombay District Police Act (Bombay Act IV of 1890), section 47—Right of the Police to have free access to a place of public amusement or resort—Race-course enclosure.

Races were held in a certain enclosed ground at Poona which belonged to the Military authorities, and was lent for the purpose to the Western India Turf Club. The part of the ground to which the public were admitted, was fenced in by ropes, and soldiers were stationed at intervals to prevent any persons entering or leaving the enclosure otherwise than through the passages provided for the purpose. The Inspector of Police, who was present on duty in that capacity, contrary to the regulations prescribed by the stewards of the races, crossed over the fencing ropes into the enclosure instead of going in by the regular entrance. This was reported to the honorary secretary of the club, who had general charge of the arrangements. He sent for the inspector, and after an interview with him ordered two soldiers, who were in attendance to keep order, to put him out of the enclosure. They accordingly did so, laying hands on him in the first instance, but immediately at his request letting him go and merely escorting him outside. He thereupon under section 353 of the Penal Code (Act XLV of 1860) charged the secretary of the club with using criminal force to a public servant in the exercise of his duty.

Held, that the offence had been committed. Under section 47 of the Police Act (Bombay Act IV of 1890) the police had a right of free access to the race-course.

[22 Bom page 759.]

(B.) **QUEEN-EMPRESS vs. KALU DOSAN.**

Criminal Procedure Code (Act X of 1882), section 412—Appeal from a conviction by a Magistrate, other than a Presidency Magistrate, where accused pleads guilty—Appeal.

The accused pleaded guilty to a charge of kidnapping from lawful custody, and was thereupon convicted by a Magistrate of the First Class and sentenced to four months' rigorous imprisonment and a fine of Rs. 20. The accused appealed and in appeal denied that he had committed the offence. The Sessions Judge was of opinion that, as the accused had pleaded guilty at the trial, he had no power to deal with the appeal except as regards the amount of punishment awarded. He, therefore, referred the case to the High Court.

Held, that the Sessions Judge was competent to deal with the whole appeal. Section 412 of the Criminal Procedure Code (Act X of 1882) had no application. That section provides for convictions by Courts of Session

or Presidency Magistrates only and the exception is not only as to the extent but also as to the legality of the sentence.

[22 Bom. page 760.]

(C.) **QUEEN-EMPRESS vs. HANMA.**

Practice—Procedure—Sentence—Enhancement of sentence—Power of appellate Court—Conviction and sentence on two separate charges—Retention of sentence where conviction on one of the charges is reversed—Criminal law.

Where an accused person is convicted and sentenced on two separate charges, the appellate Court has no power, in appeal, to maintain the whole sentence when it reverses the conviction on one of the charges, as to do so is, in effect, to enhance the sentence.

[22 Bom. page 766.]

(D.) *In re* **LIMBAJI TULSI RAM.**

Municipal Act, Bombay (Bombay Act III of 1888), section 472—Continuing offences—Punishment for such offences after a fresh conviction—Separate prosecution for continuing the offence—Practice—Procedure.

A Presidency Magistrate, having convicted certain accused persons and fined them under section 471 of the City of Bombay Municipal Act (Bombay Act III of 1888), proceeded in the same order, purporting to act under the provisions of section 472, to fine them so much per day in case they continued the offence.

Held, that the latter order was illegal under section 472 of the Act. The section requires a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to his discretion to determine.

[22 Bom. page 768.]

(E.) **QUEEN-EMPRESS vs. KHANDU SINGH.**

Penal Code (Act XLV of 1860), sections 463 and 471—Using as genuine a false document.

The accused applied to the Superintendent of Police at Poona for employment in the police force. In support of his application he presented two certificates which he knew to be false. One of these certificates was a wholly fabricated document, whilst the other was altered by several additions made subsequently to the issue of the certificate.

Held, that the accused was guilty of offences under sections 463 and 471 of the Indian Penal Code (Act XLV of 1860).

[22 Bom. page 769.]

(A.) QUEEN-EMPRESS vs. BABAJI.

Forest Act (VII of 1878), section 78—
Refusal to serve as member of a panch
—Indian Penal Code (Act XLV of 1860),
section 187.

A person was convicted under section 187 of the Indian Penal Code for refusing, when called on by a forest guard, to serve as one of a *panch* for the purpose of drawing up a *panch-nama* with reference to certain wood alleged to have been illegally cut in a reserved forest.

Held, that the conviction was illegal. The accused was not shown to be one of the persons contemplated by the first three paragraphs of section 78 (1) of the Indian Forest Act (VII of 1878), nor was the purpose for which he was called upon to give his assistance, one of the purposes mentioned in clauses (a) to (d) of the section. He was, therefore, not legally bound to assist the forest guard.

[22 Bom. page 841.]

(B.) QUEEN-EMPRESS vs. WILLIAM PLUMNER.

Criminal Procedure—Continuing offence—
Cantonments Act (XIII of 1889), section
26—Rule 2 of the Rules made under section
26—Additional fine for continuing
offence.

The additional fine referred to in Rule 2 of the Rules framed under section 26 of the Cantonments Act XIII of 1889, is not only to be imposed *after* the first conviction, but is to follow proof that failure is persisted in. The additional fine cannot be imposed as a threat in case of possible persistence, which, being in the future, cannot be made matter of present proof. The continuing failure must be matter of later and separate inquiry and proof.

In re Limbaji (I.L.R. 22 Bom. 766; followed.

[22 Bom. page 843.]

(C.) *In re* RAHIMU BHANJI.

Municipality—Bombay District Municipal
Act (Bombay Act VI of 1873), section
84—Taxation—Duty on goods imported
within municipal limits—"Imported"
—Meaning of the word.

A rule of the Thána Municipality provided for the levy of octroi duty on certain articles "when imported within the Thána Municipal District."

Held, that goods merely passing through the Municipal district in the course of transit to Bombay were "imported" within the meaning of the rule and were, therefore, liable to duty.

[22 Bom. page 844.]

(D.) *In re* DEVIDIN DURGA PRASAD.

Criminal Procedure Code (Act X of 1882, sections 517 and 523—Disposal of property produced before a Court during an inquiry—Restoration of previous possession if no offence is committed. ✓

Section 517 of the Code of Criminal Procedure (Act X of 1882) is the only section under which a Court can make an order for the disposal of property produced before it in the course of an inquiry or trial. And it has jurisdiction to pass the order only if the case falls within the section, that is, if it is property "regarding which, an offence appears to have been committed or which has been used for the commission of an offence." Otherwise, the only legal order which the Court can pass is one restoring the previous possession.

A Presidency Magistrate, finding the evidence not sufficient to warrant a conviction, discharged the accused, but ordered the property which had been produced during the inquiry to be detained until the title of the rightful owner was proved before a Civil Court. On a subsequent day he, apparently acting under section 523 of the Code, ordered the property to be delivered to the complainant, from whose possession it had not been taken. ✓

Held, that both the orders were *ultra vires*. The Magistrate was, therefore, directed to dispose of the property in a legal manner. If he found that the case fell within section 517, he should pass such order as he thought fit; if he found that it did not, he must restore the previous possession.

[22 Bom. page 859.]

(E.) *In re* MOTIRAM.

Criminal Procedure Code (Act X of 1882), section 345—Compounding offences—
Mischief—Mischief done to the private property of a village Mahār.

The accused was charged with mischief for causing damage to crops which were the private property of a village Mahār. The Magistrate refused to allow the offence to be compounded, on the ground that the damage was done to a village Mahār and, therefore, could not be treated as damage affecting only a private person, as Mahārs had duties to perform in connection with the village.

Held, that the offence was compoundable under section 345 of the Code of Criminal Procedure (Act X of 1882), as the damage was caused to a private person and not to the public. The fact that the complainant was a village Mahār would not make his personal property the property of the public, or even of the Mahār community generally.

[22 Bom. page 933.]

(A.) **QUEEN-EMPRESS vs. BABAJI LAXMAN.**

Cattle Trespass Act (I of 1871), section 11
—Forest Act (VII of 1878), section 69
—Cattle straying in a reserved forest—
Seizure by a forest officer of such cattle.

Section 11 of the Cattle Trespass Act (I of 1871) having been applied to forests by section 69 of the Indian Forest Act (VII of 1878) the seizure by a forest officer of cattle found straying in reserved forest is legal, even though no damage has actually been done.

[22 Bom. page 934.]

(B.) **QUEEN-EMPRESS vs. SAKAR JAN MAHOMED.**

Criminal Procedure Code (Act X of 1882), section 560—Compensation for vexatious complaint—Compensation illegal where the complainant is a police officer.

Section 560 of the Criminal Procedure Code (Act X of 1882), does not authorize a Magistrate to pass an order for compensation to be paid by the complainant to the accused, where the complaint is instituted by a police officer. *Ramjeevan Koormi vs. Durga Charan Sadhu Khan* (I. L. R. 21 Cal. 979), followed.

[22 Bom. page 936.]

(C.) **In re CHOTA LAL MATHURADAS.**

Criminal Procedure Code (Act X of 1882), section 195—Sanction to prosecute—Departmental inquiry into the misconduct of a revenue officer—Judicial proceeding—Bombay Land Revenue Code (Bom. Act V of 1879), sections 196, 197.

A Collector, on receiving information that his Deputy Chitnis had attempted to obtain a bribe, ordered his Assistant-Collector to make an inquiry into the matter, with a view to taking action under section 32 of the Bombay Land Revenue Code (Bom. Act V of 1879). The Assistant-Collector found, on inquiry that the charge of bribery was unfounded, and gave a sanction to prosecute the informant and his witnesses for giving false evidence. This sanction was revoked by the Collector. The Chitnis appealed to the High Court against the order revoking the sanction.

Held, that the inquiry made by the Assistant-Collector was a departmental inquiry, and not a judicial proceeding, and that the Assistant-Collector, while holding the inquiry, was not a Court. No sanction for prosecution was therefore, necessary under section 195 of the Criminal Procedure Code (Act X of 1882).

[22 Bom. page 949.]

(D.) **In re HARILAL BUCH.**

Criminal Procedure Code (Act X of 1882), section 96—Search warrant—Issue of search warrant illegal in the absence of any inquiry, trial or other proceeding pending before Magistrate—Power of revision in criminal cases—Revision.

Some treasure belonging to the Native State of Radhanpur was missing. The Administrator of Radhanpur sent a telegram to the District Superintendent of Police at Ahmedabad, stating that part of the missing treasure was in the possession of the accused, who was a resident of Ahmedabad, and asking that his house should be searched. In consequence of this telegram, the City Police Inspector applied for a search warrant to the City Magistrate of Ahmedabad. Thereupon the Magistrate issued a search warrant under section 96 of the Code of Criminal Procedure (Act X of 1882). In execution of this warrant the house of the accused was searched and the police seized and took away certain property belonging to the accused, to his wife, and to his servant.

The accused was subsequently arrested under a warrant issued by the Political Superintendent of Palanpur under section 11 of the Extradition Act, XXI of 1879, but he was admitted to bail by the District Magistrate of Ahmedabad. On the 12th June 1897, the District Magistrate passed an order refusing to deliver up the property seized by the police to the Political Superintendent of Palanpur, but allowing the police to retain the property for some time, as it was possible that a prosecution would be instituted in British India in respect of the stolen treasure. The Magistrate directed that, if no prosecution were instituted within two months, the property should be restored to the persons from whose possession it was taken.

The District Magistrate subsequently reversed this order as being erroneous and passed a fresh order on the 3rd August 1897, directing the property to be delivered up to the Political Superintendent of Palanpur.

Held, that the City Magistrate had no authority to issue a search warrant under section 96 of the Code of Criminal Procedure (Act X of 1882), as at the time of issuing the search warrant there was no investigation, inquiry, trial or other proceeding under the Code pending before the Magistrate, for the purposes of which the production of the articles seized was necessary or desirable.

Held, also that the search warrant being illegal and *ultra vires*, the subsequent orders relating to the detention and delivery of the property seized were also illegal and unjustifiable.

Per RANADE, J.—The District Magistrate had no power to review his own previous orders of the 12th June 1897, passed on full inquiry and after hearing both parties.

The power of revision in Criminal cases is very strictly confined, and the same considerations which prevent Subordinate Courts from altering their judgments on review, hold

good in respect of final orders which are of the nature of a judgment

[23 Bom. page 970.]

(A.) *In re* BHOLA SHANKAR.

Police—Bombay District Police Act (Bombay Act IV of 1880), sections 53, cl. 2, and 65 Panch-nama—Refusal to attend in order to make a panch-nama.

The accused refused to attend to make a panch-nama regarding an obstruction to a public road caused by a grain-dealer by keeping his grain bags on the road. He was thereupon convicted under section 53, clause (2), and section 65 (1) of the Bombay District Police Act (Bom. Act IV of 1890).

Held, that the conviction was illegal. Non-attendance to make the panch-nama in question was not an offence punishable under the Police Act.

[22 Bom. page 980.]

(B.) MUNICIPALITY OF BOMBAY *vs.* SUNDERJI.

Municipality—Bombay City Municipal Act (Bombay Act III of 1888), section 461 (d)—By-law—By-law restricting the height of buildings on a site previously built upon—Validity of such by-law.

The Municipality of Bombay has power under section 461, clause (d), of Bombay Act III of 1888 to make a by-law restricting the height of a new building erected on a site which had been previously built upon.

[22 Bom. page 988.]

(C.) *In re* MAHARANA SHRI JASWATSANGJI.

Criminal Procedure Code (Act X of 1882), section 133—River—Obstruction in a public river—Meaning of obstruction as used in the section.

Section 133 of the Code of Criminal Procedure (Act X of 1882) contemplates not only that the way, river, or channel where an unlawful obstruction is made must be one of public use, but also that the obstruction must be of that public use.

Where a dispute arose between the proprietors of two talukdari villages situate on the banks of a river about the diversion of the course of the river by means of a dam and a trench made by one of them in the current of the river, and each talukdar claimed the river as his own private property.

Held, that the Magistrate had no jurisdiction to interfere under section 133 of the Criminal Procedure Code (Act X of 1882.)

[23 Bom. page 32.]

(D.) *In re* KRISHNAJI P. JOGLEKAR. Criminal Procedure Code (Act X of 1882), sections 107, 167 and 344—Remand of prisoners in police custody—Security to keep the peace—Magistrate's power to demand such security from persons residing beyond his local jurisdiction.

Under section 167 of the Code of Criminal Procedure (Act X of 1882) the period for which a Magistrate can authorize the detention of the accused in police custody is fifteen days on the whole, including one or more remands.

A Magistrate cannot call upon a person residing beyond his local jurisdiction to give security against a breach of the peace within that jurisdiction.

In re Jai Prakash Lal (I. L. R. 6 All. 26), *In re* Abdul Aziz (I. L. R. 14 All. 49), *In re* Rajendro Chunder Roy (I. L. R. 11 Cal. 737), *Dinanath Mullik vs. Girija* (I. L. R. 12 Cal. 133) and *Queen-Empress vs. Engadu* (I. L. R. 11 Mad. 98) followed.

[23 Bom. page 50.]

(E.) QUEEN-EMPRESS *vs.* GANESH.

Criminal Procedure Code (Act X of 1882), sections 195, 369—Sanction to prosecute—Revision—Sessions Judge's power to review his order in proceedings taken to revoke sanction.

A Sessions Judge, having once refused to revoke a sanction granted by a Subordinate Court under section 195 of the Criminal Procedure Code (Act X of 1882), has no jurisdiction afterwards to review his order and set aside the sanction.

An application to a Sessions Judge for revocation of a sanction granted under section 195 of the Code is a Criminal proceeding in revision. Any order passed in such a proceeding is final, and cannot be reviewed or revised by him.

[23 Bom. page 54.]

(F.) *In re* JAMNADAS HARINARAN.

Stamp Act (I of 1879), section 3 (17)—Receipt—Memorandum of payment—Document containing no acknowledgment of payment not a receipt—No stamp necessary for such document.

A made a payment of Rs. 22 to B. At A's request C made a memorandum in writing to the following effect:—"B has received Rs. 22," but affixed no stamp to it. He was charged and convicted, under section 61 of the Indian Stamp Act (I of 1879), for not affixing a receipt stamp to the memorandum.

Held, (reversing the conviction), that the memorandum was not a receipt. To constitute a receipt within the meaning of section 3 (17) of the Stamp Act, there must be an acknowledgement, either express or implied, of the receipt, and not a mere statement that money was received.

[20 All. page 426.]

(A.) QUEEN-EMPRESS vs. TIRBENI-SAHAI.

Criminal Procedure Code, section 342—Evidence—Accused persons under trial separately for a substantive offence and for abetment of that offence—competent witnesses on each other's behalf.

Prisoner A was tried for an offence under section 403 of the Indian Penal Code and was convicted, but was sent to a Magistrate of higher powers than the convicting Magistrate to be sentenced. Whilst his case was pending before the second Magistrate, prisoner B, being on his trial separately for abetment of the offence for which A had been tried, applied for A to be summoned as a witness on his behalf. B's application was refused.

Held, that section 342 of the Code of Criminal Procedure was no bar under the circumstances to A's giving evidence for B, and that B's application ought to have been granted.

[20 All. page 440.]

(B.) QUEEN-EMPRESS vs. NIHAL CHAND.

Act I of 1879 (Indian Stamp Act), section 61—Stamp—Promissory note—Person receiving an understamped promissory note not liable under section 61.

Under section 61 of Act No. I of 1879 the "person accepting" a promissory note not duly stamped is the person who executes such note as acceptor, not a person who merely receives the note. The mere receiver of an unstamped or insufficiently stamped promissory note is not as such liable to any penalty under this section, either as principal or abettor. Queen vs. Gulam Husain Sahab (I. L. R. 7 Mad. 71); the Queen vs. Nadi Chand Poddar (24 W. R. C. R. 1); Empress vs. Jauki (I. L. R. 7 Bom. 82), and Empress vs. Gopal Das (W. N. 1883 145) referred to.

[20 All. page 459.]

(C.) QUEEN-EMPRESS vs. PRAG DAT.

Criminal Procedure Code (1882), section 417—Appeal by Government from an acquittal on the same footing as an appeal from a conviction—Act No. XLV of 1860, sections 96 *et seqq*—Right of private defence.

When a body of men are determined to vindicate their rights or supposed rights by unlawful force and when they engage in a fight with men who, on the other hand, are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence arises.

In the Code of Criminal Procedure there is no apparent distinction between the right of appeal against an acquittal and a right of appeal against a conviction. Queen-Empress vs. Gayadin (I. L. R. 4 All. 148) and Queen-Empress vs. Gobardhan (I. L. R. 9 All. 528) referred to.

[20 All. page 501.]

(D.) QUEEN-EMPRESS vs. JASODA NAND.

Criminal Procedure Code (1882), sections 133, 135 and 136—Act No. XLV of 1860, (Indian Penal Code), section 188—Power of Magistrate to order repair of a house not adjoining a public road.

Section 133 of the Code of Criminal Procedure does not empower a Magistrate to order the owner of a house standing apart from any public road in its own compound to repair such house. By "persons living or carrying on business in the neighbourhood," injury to whom the power to pass orders under section 133 is intended to prevent, are meant, not the persons who in the exercise of their private rights may use a building supposed to be in a dangerous condition, but unascertained members of the public whose ordinary avocations may take them to the neighbourhood of such building.

Queen-Empress vs. Narayana I. L. R. 12 Mad. 475 and Queen-Empress vs. Bishamber Lal I. L. R. 13 All. 577 distinguished.

[20 All. page 529.]

(E.) QUEEN-EMPRESS vs. BRIJ NARAIN MAN.

Criminal Procedure Code, section 339—Pardon by Magistrate enquiring into a Criminal Case—Pardon withdrawn after some of the witnesses for the prosecution had been examined—effect of withdrawal of pardon at that stage.

A Magistrate inquiring into a charge of dacoity tendered a pardon to one of the accused persons. The pardon was accepted and the person to whom it was tendered was examined as a witness for the prosecution. Subsequently and after certain other witnesses for the prosecution had been examined, the Magistrate, being of opinion that the person to whom pardon had been tendered had not made a full disclosure of the facts of the case, withdrew the pardon, put the person to whom it had been tendered back in the dock, and ultimately committed him along with the other accused to the Court of Session. Held, that the commitment of the person whose pardon had been withdrawn must be quashed, inasmuch as he had had no opportunity of cross-examining the witnesses for the prosecution who were examined before his pardon was withdrawn; but that it was not necessary that if a fresh commitment could be made in time, his trial before the Court of Sessions should be postponed until the trial of his co-accused had been completed. Queen-Empress vs. Sudra I. L. R. 14 All. 336 and Queen Empress vs. Mulna, I. L. R. 14 All. 502 referred to.

[20 All. page 534.]

(F.) QUEEN-EMPRESS vs. BEHARI LAL.

Act No. I of 1892 (Local) (N. W. P. and Oudh Lodging House Act) section 5, sub-section 2—Lodging House—House of "Pragwal" used for accommodation of pilgrims.

Held, that a "pragwal" who according to

custom affords accommodation to his clients when they come to Allahabad for religious purposes, is bound, under the North-Western Provinces and Oudh Lodging-House Act, 1892, to take out a license in respect of such houses as he may use for the accommodation of his clients.

[21 All. page 25.]

(A.) QUEEN-EMPRESS *vs.* RAM
BARAN SINGH.

Criminal Procedure Code, section 295—
Whipping—Sentence of imprisonment in
lieu of whipping—Powers of Magistrate.

Where a prisoner who has been sentenced to whipping is found to be unfit to undergo such sentence, and such sentence is accordingly commuted to one of imprisonment, such substituted term of imprisonment must not bring the total term to which such prisoner is sentenced up to a term in excess of the maximum which the Court passing the sentence is competent to inflict. *Queen-Empress vs. Sheodin* (I. L. R. 11 All. 308) referred to.

[21 All. page 26.]

(B) JADUBAR SINGH *vs.* SHEO
SARAN SINGH.

Suit for malicious prosecution—Reasonable
and probable cause—Evidence—Conviction
of plaintiff by a Criminal Court.

The fact that the plaintiff in a suit for damages for malicious prosecution has been convicted by a competent Court, although he may subsequently have been acquitted on appeal, is evidence, if un rebutted, of the strongest possible character against the plaintiff's necessary plea of want of reasonable and probable cause. *Parimi Bapirazu vs. Bellamkonda Chinna Venkayya* 3 Mad. H. C. Rep. 238—followed.

[21 All. page 86.]

(C.) QUEEN-EMPRESS *vs.* MAN
MOHAN LAL.

Criminal Procedure Code, sections 110,
121, 514, Sch. V. Form No. XLVI—
Security for good behaviour—Conviction
of principal—Forfeiture of bond—Mode
of proving conviction.

Where a person has given a security bond under section 118 of the Code of Criminal Procedure for the good behaviour of another, and the principal during the term for which the bond is in force is convicted of an offence punishable with imprisonment, the production of the conviction, and if necessary, of proof of identity of the principal, is sufficient evidence upon which the Magistrate is authorized to issue notice to the surety under section 514 of the Code, to show cause why the penalty of the bond should not be paid. In such a case it is for the surety to show what cause he can. It is not incumbent on the Magistrate to re-summon the witnesses on whose evidence the principal was convicted and practically to re-try the case against the principal.

[25 Cal. page 852.]

(D.) QUEEN-EMPRESS *vs.* PRATAP
CHUNDER GHOSE.

Nuisance—Criminal Procedure Code (Act X
of 1882), section 144—Order regulating
boat traffic at a landing-place—High Court
power of revision when order cannot be
made under that section.

An order regulating the boat traffic at a certain landing place of a river in the manner directed by the order passed in this case, held to be not an order that is authorised by section 144 of the Criminal Procedure Code. If the order be one that cannot be made under section 144 of the Criminal Procedure Code, the mere fact of the order purporting to have been made under that section does not prevent the High Court from interfering with it in revision. *Abbeyeswari Debi vs. Sidheswari Debi* (I. L. R. 16 Cal. 80), and *Ananda Chundra Bhattacharjee vs. Stephen* (I. L. R. 19 Cal. 127), followed.

[25 Cal. page 858.]

(E) PUNARTEO SARAIN SINGH *vs.*
RAMSARUP ROY.

Jurisdiction of Criminal Court—Criminal
Procedure Code (Act X of 1882), section
182—Local area—Uncertainty as to the
situation of the scene of offence marginal
notes to sections of Act.

When there is an uncertainty as to whether a particular spot, where an offence has been committed, is situated within one district or another, the case is governed by section 182 of the Criminal Procedure Code (Act X of 1882), and the offence is triable in the Court of either district. The expression "local area" includes, and was intended to include, a "district."

Marginal Notes to sections of an Act do not form part of the Act. *Sutton vs. Sutton* (1882 L. R. 22 Ch. D. 511), and *Dukhi Mollah vs. Halway* (I. L. R. 23 Cal. 55.), followed.

[25 Cal. page 863.]

(F.) GOMER SIRDA *vs.* QUEEN-
EMPRESS.

Witness—Right of accused to have witnesses
re-summoned and re-heard—Criminal Pro-
cedure Code (Act X of 1882), section 350
(a) section 537—Commencement of pro-
ceedings—Interlocutory orders—Trial,
Meaning of—Right to have witnesses
summoned and re-heard—Irregularity—
Refusal to recall witnesses.

An accused person does not lose the right of having the witnesses re-summoned and re-heard under proviso (a) section 350, of the Criminal Procedure Code, because an interlocutory application for enforcing the attendance of certain witnesses has been made and granted, not at the trial but before the trial and with a view to the trial. The proper time for making such application is when the trial commences before the Magistrate. The

expression "trial" means the proceeding which commences when the case is called on with the Magistrate on the bench. the accused in the dock, and the representatives of the prosecution and for the defence, if the accused be defended, present in Court for the hearing of the case. Section 537 of the Criminal Procedure Code cannot cure the defect in the proceedings by reason of the Magistrate's refusal to re-summon and re-hear the witnesses in contravention of proviso (a), section 350.

[26 Cal. page 49.]

(A.) BASANTA KUMAR GHATTAK
vs. QUEEN-EMPRESS.

Evidence in Criminal Case—Criminal Procedure Code (Act X of 1882), section 342
—Statement of accused under that section
—Misdirection.

A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under section 342 of the Criminal Procedure Code. It is a misdirection to ask the jury to consider a document, purporting to be proved by such a statement, as evidence against the accused.

[22 Mad. page 1.]

(B.) QUEEN-EMPRESS vs. DONAGHUE.

Evidence Act—Act I of 1872, section 122—
Privileged communication—Letter from husband to wife—Letter taken on search of wife's house.

On a trial for the offence of breach of trust by a public servant, a letter was tendered in evidence for the prosecution, which had been sent by the accused to his wife at Pondicherry, and had been found on a search of her house made there by the Police.

Held, that the letter was admissible in evidence against the accused.

[22 Mad. page 15.]

(C.) QUEEN-EMPRESS vs. ANGA
VALAYAN.

Criminal Procedure Code—Act X of 1882, sections 269, 307, 533—Penal Code—Act XLV of 1860, sections 395, 396, 412—Verdict of jury and their opinion as assessors—Confessional statement.

Ten persons were committed to a Sessions Court, charged with offences under Indian Penal Code, sections 395 and 396, and some of them were also charged with offences under section 412. One of the accused had made a confessional statement before the Magistrate, who recorded it, but did not make on it a memorandum to the effect stated in Criminal Procedure Code, section 164, and did not admit it in evidence for the reasons that the accused was produced from the custody of the police, in which he had been detained for five days, and there

was a proposal on the part of the police to treat him as an approver. It appeared that a perusal of the preliminary register would have shown that the accused were either guilty under section 396 or not guilty under section 395 at all. The accused were tried by the Sessions Judge with a jury. The confessional statement was not admitted in evidence. The jury found the accused not guilty of dacoity, but the Judge disagreeing with the verdict referred the case to the High Court under Criminal Procedure Code, section 307.

Held, (1) that the procedure adopted by the Judge was wrong and that he should have tried the accused with the aid of assessors under Indian Penal Code, section 396; (2) that the Judge should have enquired, under Criminal Procedure Code, section 533, whether the confessional statement had been duly made; and (3) that, under the circumstances, the High Court should determine on the evidence on record, after giving due weight to the opinions of the Judge and the jury, whether the accused were guilty under section 395.

[22 Mad. page 47.]

(D.) QUEEN-EMPRESS vs. SRI
AHOBALAMATAM JEER.

Criminal Procedure Code, section 350—
Transfer of Magistrate—Part-heard case.

A Head Assistant Magistrate during the pendency of a criminal case of which the trial was almost finished, was appointed to the office of Deputy Magistrate in another part of the same district. The case was transferred by an order of the District Magistrate to the file of the Deputy Magistrate.

Held, that the Deputy Magistrate could proceed with the trial from the point at which he had arrived as Head Assistant Magistrate.

[II Oudh Cases, 65.]

(E.) DEVI DIN (PLAINTIFF) AP-
PLICANT vs. HAR PARSHAD
(DEFENDANT) RESPONDENT.

Warrant for Attachment of property—Execution of—House trespass—Indian Penal Code, sections 448.

D brought a suit against H and P. It was proved that P was not living with H. The claim against H was dismissed and that against P was decreed. A warrant of attachment of P's property was taken out and entrusted to two process-servers. The process-servers with D and his companions entered H's house. H resisted the entry of D, but was abused and assaulted by D and his companions.

Held, that the warrant for execution issued by the court was no authority for D and his companions to enter H's house against his will and abuse and assault him.

Held, further, that the entry of D and his companions into H's house was unjustifiable and that they were rightly convicted of house trespass under section 448 of the Indian Penal Code.

[22 Mad. page 148.]

(A.) QUEEN-EMPRESS vs. FELIX.

Criminal Procedure Code Act X of 1882, section 191 (c)—Act V of 1898, sections 190, 191.

A Magistrate, when a valid objection is taken under Criminal Procedure Code, section 191, that he cannot try a case, is not bound to transfer it, but may elect to commit the case to Court of Session.

[22 Mad. page 151.]

(B.) QUEEN-EMPRESS vs. OBAYYA.

Penal Code—Act XLV of 1860, sections 206, 397, 424—Harvesting crops under attachment.

A judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force and was convicted of theft.

Held, that the accused was not guilty of theft, but of the offence of dishonestly removing the property under Penal Code, section 424. *Per BENSON, J.*—The offence was also criminal misappropriation within the meaning of Indian Penal Code, section 403.

[22 Mad. page 153.]

(C.) QUEEN-EMPRESS vs. TANGA-VELU CHETTI.

Court fees Act, VII of 1870 section 31—Criminal Procedure Code—Act X of 1882, section 428 (d).

An Assistant Magistrate having convicted the accused persons sentenced them to pay a fine, out of which Rs. 2 was to be paid to the complainant for his expenses; the Deputy Magistrate, on appeal having confirmed the conviction, passed an order under Court Fees Act, section 31, directing the accused to pay a further sum to the complainant.

Held, that the order was illegal and should be set aside.

[22 Mad. page 238.]

(D.) QUEEN-EMPRESS vs. YAKOOB SAHIB.

Town Nuisances Act (Madras)—Act III of 1889, section 3, clause 10—Penal Code—Act XLV of 1860 sections 65, 67—Imprisonment in default of fine.

An accused having been convicted of an offence under section 3, clause 10 of the Towns Nuisances Act (Madras), 1889, and sentenced to pay a fine, of Rs. 8 and in default of payment to undergo simple imprisonment for a week;

Held, (1) that section 67 of the Indian Penal Code refers solely to cases in which the

offence is punishable with fine only; and has no application to offences punishable either with imprisonment or with fine, but not with both; such sentences are governed by section 65 of the Indian Penal Code; and (2) that the sentence of imprisonment in default should not exceed one-fourth of the maximum term of imprisonment provided for the offence.

[22 Mad. page 246.]

(E.) VENKATAKRISHNA PATTAR vs. CHIMMUKUTTI.

Criminal Procedure Code—Act V of 1898, section 488—Usage in Malabar—Order for maintenance of child—Marumakkattayam law as observed by Nayar community.

The father of a child born during the continuance of the form of marriage known as *sambandham*, under the Marumakkattayam law as observed by the Nayar community in Malabar, is liable to have an order made against him for its maintenance under section 488 of the Code of Criminal Procedure.

[22 Mad. page 455.]

(F.) QUEEN-EMPRESS vs. AYYA-KANNU MUDALI.

District Municipalities Act (Madras)—Act IV of 1884, sections 188, 189—Keeping a private cart-stand without a license.

In a prosecution for using a place as a cart-stand without a license, under the Madras District Municipalities Act 1884, it was proved that carts resorted daily to the premises of the accused, laden with produce for sale to the general public and not only to the accused, who acted as a broker and permitted the carts to stand on his premises until the sale and removal of the goods was completed.

Held, that the place was used as a cart-stand within the meaning of section 188, and that the accused had committed an offence punishable under section 189 of the Act.

[22 Mad. page 459.]

(G.) QUEEN-EMPRESS vs. RANGA-MANI.

Criminal Procedure Code—Act V of 1898, section 260—Charges under Penal Code (Act XLV of 1860), sections 47 and 324—Summary procedure under Penal Code, section 323.

A first-class Magistrate took a case on his file and commenced a regular enquiry therein under sections 147 and 324 of the Indian Penal Code; but, after hearing evidence, being

of opinion that only an offence under section 323 of the Indian Penal Code had been made out, he proceeded to deal with the case summarily.

Held, that inasmuch as the evidence adduced was not sufficient to justify a committal, but clearly disclosed an offence over which he had summary jurisdiction, the Magistrate was right in acting as he did. Such a course is different to disregarding part of a charge for the purpose of dealing with a case summarily. The High Court will not interfere where a Magistrate has *bona fide* acted in the interests of justice. *Empress vs. Abdool Karim* (I. L. R., 4 Cal., 18) distinguished.

[23 Mad. page 488.]

(A.) RUPPEL vs. PONNUSAMI
TEVAN.

Merchandise Marks Act—Act IV of 1889, section 15—Use of counterfeit trade-mark—Prosecution after one year from first discovery of offence—Limitation—Penal Code—Act XLV of 1860, sections 482, 486.

A complainant having, in 1893, discovered that goods were being sold marked with what was alleged to be a counterfeit trade-mark, called upon the persons so selling to discontinue the use of the said alleged counterfeit trade-mark and to render an account of sales. The right to proceed further was reserved, but no action was then taken. In 1898, upon its being ascertained that the same trade-mark was being used, a prosecution was commenced.

Held, that, inasmuch as the complainant had not shown that he believed the use of the alleged counterfeit trade-mark had been discontinued after his first discovery and complaint in 1893, the prosecution was time barred under section 15 of the Indian Merchandise Marks Act, 1889; and that the complainant must enforce his remedy by civil process.

[22 Mad. page 491.]

(B.) QUEEN-EMPRESS vs. LAKSHAMAYYA PANDARAM.

Evidence Act—Act I of 1872, sections 30, 114, illus (b)—Joint trial—Confession of co accused—Plea of guilty by one—Evidence.

On the trial of more persons than one, jointly, for the same offence, where one of them pleads guilty, the person so pleading is no longer on his trial, and cannot be treated as being jointly tried with the others. A confession by that person affecting himself and others cannot, therefore, be taken into consideration against such others under section 30 of the Indian Evidence Act.

[23 Mad. page 151]

(C.) QUEEN-EMPRESS vs. CHINNA PAVUCHI.

Criminal Procedure Code—Act V of 1898, section 271—Evidence Act—Act I of 1872, section 80—Confession by one of several persons jointly tried for the same offence—Plea of guilty by person so confessing—Discretion to continue trial after plea of guilty.

The trial of an accused person does not necessarily end if he pleads guilty. Under section 271 of the Code of Criminal Procedure where an accused pleads guilty, "the plea shall be recorded," and the accused "may be convicted" thereon; but evidence may be taken in sessions cases as if the plea had been one of "not guilty," and the case decided upon the whole of the evidence including the accused's plea. When such a procedure is adopted the trial does not terminate with the plea of guilty, and therefore a confession by the person so pleading may be taken into consideration under section 80 of the Indian Evidence Act, 1872, as against any other person who is being jointly tried with him for the same offence. A trial does not strictly end until the accused has been either convicted or acquitted or discharged.

[23 Mad page 155.]

(D.) QUEEN-EMPRESS vs. SOMASUNDARAM CHETTI.

Penal Code—Act XLV of 1860, section 40—Stamp Act—Act I of 1879, sections 61, 67—Defrauding Government of stamp revenue by a contrivance or device not otherwise specially provided for—Receipt of unstamped document—Abolition of an offence under section 61 of Stamp Act, 1879.

Two letters were written to petitioner in which the writer recommended him to advance sums of money to the bearers of the letters and bound himself to repay those sums, if lent, in case of default on the part of the borrowers. The loans were made by petitioner, who kept the letters. A prosecution having been subsequently commenced against petitioner under section 67 of the Stamp Act, 1879, for defrauding Government of stamp revenue by an illegal device, and he having been convicted on the ground that when the loans were granted the documents became letters of guarantee and as such liable to stamp duty.

Held, that the execution of a document which on its face required to be and was not stamped, could not be said to be "an act, contrivance or device not specially provided for by this Act or any other law for the time being in force;" and that punishment for the act of the executant of such a document, if it were punishable at all, was provided for under section 61 of the Stamp Act, 1879; and it could

not therefore be dealt with under section 67. Also, that the act of a person receiving an unstamped document might amount to abatement of an offence, having regard to section 61 of the Stamp Act, 1879, and to the definition of an "offence" in section 40 of the Indian Penal Code, and if so, would be an act provided for by "any other law for the time being in force," and so not within the terms of section 67 of the stamp Act, 1879.

[23 Mad. page 159.]

(A.) QUEEN-EMPRESS vs. PAPA SANI.

Penal Code—Act XLV of 1860, section 373—Obtaining a girl under the age of 16 for purposes of prostitution—Evidence of intent.

In a charge against a dancing girl under section 373 of the Indian Penal Code for having purchased a young girl with intent that she would be used for the purpose of prostitution or knowing it to be likely that she would be so used, evidence was given of the fact of purchase for a consideration and that numerous other dancing girls residing in the neighbourhood were in the habit of obtaining girls and bringing them up as dancing girls or prostitutes, and that there were no instances of girls brought up by dancing girls ever having been married. On its being contended that there was no evidence of intent to support a conviction under section 373 of the Indian Penal Code;

Held, that there was evidence before the Court to support the conviction.

[23 Mad. page 164.]

(B.) PERU MAL vs. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS.

City of Madras Municipal Act (Madras)—Act I of 1884, section 307—Prohibition against depositing stable refuse in a street—Deposit of stable refuse in a dust-bin—Liability of person so depositing.

By the first clause of section 307 of the City of Madras Municipal Act, 1884, the president of the municipality "shall provide in the streets of the city suitable and sufficient dust-bins for the temporary deposit of dust, dirt, ashes, kitchen refuse and other offensive matter excepting building, stable and garden refuse which shall be removed by the owner thereof." By the second clause of the same section "whoever, after such provision has been made, deposits any of the said matters or any building, stable or garden refuse in any street, pavement or verandah of any building" "... is rendered liable to fine. Petitioner having deposited stable refuse in one of the dust-bins provided in accordance with

the Act was charged before a Magistrate and fined under the latter clause of the said section.

Held, that the dust bin was not a part of the street and that the throwing of stable refuse into the dust-bin was not deposit of such refuse in the street so as to constitute an offence under the said section.

[23 Mad. page 203.]

(C.) TANGI JOGHI vs. HALL.

Criminal Breach of Contract Act—Act XIII of 1859, section 2—Money advanced on account of work to be performed—Loan on condition that the workman should enter into a contract of service.

A workman agreed in writing to work for the proprietors of an estate for four years and one month, from 1st March 1899 to 31st March 1903 for an initial advance of one rupee, which was not to be repaid till after the expiration of the agreement. The same person subsequently obtained an advance of Rs. 10, to be re-imbursed by a monthly deduction of one rupee from his wages. He worked from 1st March 1899 till 18th September 1899 when he ceased to work, leaving in all a sum of Rs. 5 to be accounted for in the adjustment of the total advance. He was subsequently charged and convicted under section 2 of the Criminal Breach of Contract Act XIII of 1859.

Held, that the initial advance of one rupee was not money advanced on account of work to be performed, but rather a loan made without interest on the condition that the workman would enter into a contract of service for the duration of the loan; and that the Criminal Breach of Contract Act, 1859, was inapplicable to this case; that, with reference to the ten rupees to be repaid out of wages the Act applied, and an order should be made directing the workman to work until the expiration of the term of the contract on account of which the sum had been advanced.

[23 Mad. page 205.]

(D.) QUEEN-EMPRESS vs. AN KANNA.

Criminal Procedure Code—Act V of 1898, sections 195, 476—Order by Deputy Magistrate sanctioning prosecution—Complaint by Deputy Magistrate—Jurisdiction of Sessions Court to interfere.

A Deputy Magistrate having decided that certain witnesses (who had given evidence before himself and before two other Magistrates on different occasions relating to charges of rioting and causing hurt) had wilfully committed perjury on one occasion or another

ordered them to be prosecuted for perjury and bound them over to take their trial. The Sessions Judge set aside the said order deeming it undesirable that sanction to prosecute should be given under the circumstances.

Held, that whether the Deputy Magistrate had intended to pass an order under section 476 or to make a complaint under section 195 (1) of the Code of Criminal Procedure the Sessions Judge had no power to interfere; all that the power of revoking given under section 195 (b) is only in respect of sanctions, and not of complaints.

[2 Mad. page 210.]

(A.) PAMPAPATI SASTRI vs.
SUBBA SASTRI.

Criminal Procedure Code—Act V of 1898, section 195—Sanction for prosecution—Notice to person to prosecute whom sanction is sought—Proceedings before Sessions Court—Proper exercise of discretion.

A Sessions Court when granting sanction to prosecute under section 195 of the Code of Criminal Procedure should so frame the proceedings before it as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not although notice is not invariably necessary in cases under the section referred to, the grant of an order sanctioning prosecution is judicial act, and there may be circumstances—(such as in those cases in which there has been a difference of opinion as to the desirability for granting sanction)—in which a proper discretion cannot be said to have been exercised unless the persons sought to be prosecuted have been given an opportunity to be heard. An order of a Sessions Judge, sanctioning a prosecution, containing nothing from which the High Court could conclude that he had directed his mind to the real question in such cases, namely, whether there was a *prima facie* case on which a prosecution could be instituted with a fair chance of success, the High Court revoked the sanction.

[23 Mad. page 218.]

(B.) PARIMANAM PILLAI vs.
CHAIRMAN, MUNICIPAL
COUNCIL, OOTACAMUND.

District Municipalities Act (Madras)—Act IV of 1884, By-law No 48—District Municipalities Act Amendment Act (Madras)—Act III of 1897—Covering a drain without municipal permission.

A bye-law of a municipality had been framed under the powers conferred by an Act

of 1884, as amended by an Act of 1897, and was to the following effect:—"No public drain shall be covered without the permission of the municipal council." It had come into force in 1890. Prior to its coming into operation an earlier bye-law had subsisted, in substantially the same terms. Occupier of premises, who had covered a drain during the subsistence of the earlier bye-law, was charged with having committed an offence under the latter bye-law, and contended by way of defence that he could not be convicted inasmuch as the act complained of had been committed before the passing of the Act under which the complaint was laid. He was convicted by a Bench of Magistrates.

Held, that the conviction was right. *Per* ARNOLD WHITE, C. J.—The bye-law applies to all drains which existed in a covered state at the time when it came into operation. The word "shall" is used throughout the bye-laws in the imperative, and not with reference to time, and this is the sense in which it is used in the bye-law in question. *Per* BAXSON, J.—A bye-law similar in terms to that under which the accused had been convicted having been in existence under the then Municipal Act at the time when the accused first covered the drain in question, the liability then incurred by him continued, under the General Clauses Act (Madras), unaffected by the passing of the present Municipal Act. The contention that the accused could not be convicted because the act complained of was committed before the present Municipal Act was passed, therefore, failed.

[23 Mad. page 220.]

(C.) QUEEN-EMPRESS vs. VENKA-
TASAMI NAIDU.

Abkari Act (Madras)—Act I of 1886, section 56 (b)—License to keep toddy shop—Failure to keep shop open—Omissions not constituting an act.

By section 56 (b) of the Abkari Act (Madras), 1886, whoever, being the holder of a license or permit granted under the Act, "does any act in breach of any of the conditions of his license or permit not otherwise provided for in this Act" may be punished with fine or imprisonment or with both. The holder of a license to keep a shop for the sale of toddy having been convicted for failing to keep his shop open, in breach of one of the conditions of the license.

Held, that even if the license was under an obligation to keep open his shop (which did not appear to be the case), an omission to do so did not amount to an act in breach of the condition of the license; and that the conviction must in consequence be set aside.

[23 Mad. page 223.]

(A.) QUEEN-EMPRESS vs. VENKA
TARAMANNA.

Criminal Procedure Code—Act V of 1898, sections 195, 476—Penal Code—Act XLV of 1860, section 193—Intentionally giving false evidence at a judicial proceeding—Preliminary enquiry by a Magistrate.

At a preliminary enquiry held by a Sub-divisional Magistrate, at the direction of the District Magistrate, into the circumstances of a complaint against the police, a witness made a false statement on oath. Notice was subsequently issued calling upon the said witness to show cause why sanction should not be granted for his prosecution. The Magistrate having held that the witness was bound to tell the truth at the said enquiry and having granted sanction for his prosecution under section 193 of the Indian Penal Code:

Held, that the enquiry before the Magistrate in the course of which the alleged offence was committed was not a Judicial proceeding within the meaning of section 193 of the Indian Penal Code, and the witness could not be convicted under that section.

[23 Mad. page 225.]

(B.) QUEEN-EMPRESS vs. HANU-
MANTHA REDDI.

Criminal Procedure Code—Act V of 1898, section 486—Fresh inquiry after improper discharge of accused persons—Jurisdiction of Sessions Judge after acquittal.

Charges under sections 30f and 147 of the Indian Penal Code were brought by the police against certain accused in the Court of a Deputy Magistrate who took all the evidence for the prosecution but went on furlough without passing any order of committal or otherwise. His successor, considering the evidence insufficient to support the charges, altered them to charges under sections 325 and 147 of the Indian Penal Code, and after hearing evidence for the defence acquitted the accused. The Sessions Judge, considering the alteration in the charges improper at such a stage, ordered a fresh inquiry into the offence.

Held, that the Sessions Judge had exercised a jurisdiction not conferred upon him by law and that his order for a fresh inquiry must be set aside.

[23 Mad. page 540.]

(C.) KANDASAMI CHETTI vs SOLI
GOUNDAN.

Criminal Procedure Code—Act V of 1898, section 197—Charge against Village Magistrate for alleged offence while acting not in a judicial capacity—Sanction.

A Village Magistrate, having been apprised of a disturbance in his village, forcibly separated the combatants, one of whom thereupon preferred a charge against him of causing hurt. The complaint was taken by the Sub-Magistrate upon his file without any previous sanction of the Government or other authority mentioned in section 197 of the Code of Criminal Procedure. The Village Magistrate raised the objection that the prosecution could not legally be proceeded with until such sanction had been first obtained. The Sub-Magistrate held that such sanction was unnecessary and kept the case on his file and commenced to enquire into it. The Village Magistrate presented a petition to the District Magistrate raising the same ground of objection, whereupon the District Magistrate quashed the whole of the proceedings, holding that the Sub-Magistrate had no jurisdiction to try the case against a village officer without sanction having been first obtained.

Held, that sanction was not necessary under section 197 of the Code of Criminal Procedure. The Village Magistrate, while preventing an offence, was not acting in the capacity of a Judge, or a public servant not removable from office without the sanction of Government, and therefore the section referred to had no application.

Held also, that the order of the District Magistrate quashing the proceedings of the Sub-Magistrate was passed without jurisdiction. *Scilicet*, that a Village Magistrate exercising jurisdiction, and trying an offender under Regulation XI of 1816 is a Judge within the meaning of section 197 of the Code of Criminal Procedure and section 19 of the Indian Penal Code.

[23 Mad. page 544.]

(D.) QUEEN-EMPRESS vs. SAN-
KARALINGA KONE.

Criminal Procedure Code—Act V of 1898, section 161—Examination of witnesses by the Police—Legal obligation to speak the truth—Refusal to answer questions—Liability to punishment under sections 176, 179 and 187 of the Indian Penal Code.

A refusal to answer questions asked by a Police officer under section 161 of the Code of Criminal Procedure not punishable under

sections 176, 179 and 187 of the Indian Penal Code.

[23 Mad page 626.]

(A.) *QUEEN-EMPRESS vs. CHEN-CHAYA.*

Criminal Procedure Code—Act V of 1898, section 248—Withdrawal of complaint—“Complainant.”

A complaint having been made to the police, the latter caused charges to be preferred under sections 143 and 504 of the Indian Penal Code against certain accused. The person who had complained to the police subsequently filed a petition praying the Second Class Magistrate to withdraw the charges under section 248 of the Code of Criminal Procedure. The Magistrate permitted the withdrawal and directed the accused to be set at liberty.

Held, that the order was bad, there being no “complainant” in the case, and that consequently the Magistrate in purporting to act under section 248 had exceeded his powers.

[23 Mad. page 632.]

(B.) *QUEEN-EMPRESS vs. GANAPATHI VANNIANAR.*

Criminal Procedure Code—(Act V of 1898—sections 269 (1), 536 (2)—Order directing trial by jury—“Particular class of offences”—Revocation of order—Jury case tried by assessors—Omission to take objection before finding recorded—Validity of trial.

By section 269 of the Code of Criminal Procedure the local Government may, with the previous sanction of the Governor-General in Council, by order in the official Gazette, direct that the trial of offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction, revoke or alter such order. In the Fort St. George Gazette, dated 30th August 1899, it was notified that, whereas by orders previously made the trial of persons charged with certain offences should in certain districts of the Presidency, including that of Tinnevely, be by jury; and whereas disturbances known as the anti-Shanar disturbances had taken place in the districts of Tinnevely and Madurai, and certain persons stood committed for trial and others might thereafter be similarly committed in connection therewith, the Governor in Council, with the previous sanction of the Governor-General in Council, directed under section 269 of the Code of Criminal Procedure, that the said previous orders be revoked as regards the persons referred to, and that such persons should be tried with the aid of assessors

and not by jury. Certain persons having been so tried for offences under sections 148, 454, 395 and 323 of the Indian Penal Code, one assessor gave it as his opinion that none of them were guilty, the other assessor finding some of them not guilty. The Additional Sessions Judge convicted and sentenced all the accused, whereupon the objection was taken, on appeal in the High Court, that the trial should have been by jury and not with the aid of assessors, and that the conviction should therefore be set aside. The objection was not taken at the trial.

Held, that the omission to take objection to the trial before the Court had recorded its findings was fatal to the contention now urged, that the trial was invalid.

Held further, that even assuming that objection had been duly taken, the offences connected with the outbreak had been rightly treated as a “class of offences,” and that it was competent to the Government, with the consent of the Governor-General in Council, to revoke the previous notification so far as it related to that class.

[23 Mad. page 636.]

(C.) *QUEEN EMPRESS vs. PAN-DARA TEVAN.*

Criminal Procedure Code—Act V of 1898, section 209—Examination of accused before committal—Discretion of Magistrate.

It is the duty of a Magistrate, before committing accused persons for trial, to examine them for the purpose of enabling them to explain any circumstances appearing in the evidence against them. The effect of section 209 of the Code of Criminal Procedure is that it is not left to the discretion of the Magistrate who intends to commit to examine the accused. He is bound to examine them, and if he makes an order of commitment without such examination, the order is irregular.

[24 Mad. page 13.]

(D.) *QUEEN-EMPRESS vs. RAMA.*

Reformatory Schools Act—Act VIII of 1897, sections 8, 9, 11, 13, 16—Youthful offenders—Periods of detention allowable under the Act—Finding by Magistrate as to age—Form of order—Exact period of detention.

A District Magistrate before whom the case of a youthful offender came, under the provisions of section 9 of the Reformatory Schools Act, 1897, found the accused to be thirteen years of age, sentenced him to six months' rigorous imprisonment, and directed that in lieu of undergoing that sentence he should be detained in a Reformatory School for a period of five years, unless he should

attain the age of eighteen years at an earlier date.

Held, that the order was wrong inasmuch as it failed to fix the exact period of detention. *Semle*, that in some cases it may not be necessary to ascertain the exact age of the offender. If he be not over fifteen, a period of three years may be rightly fixed; if not over eleven, a period of seven years may be fixed without further enquiry. But in cases in which enquiry is necessary in order to fix the period, as when the offender is over eleven, and the Magistrate wishes to make the period as long as possible, he must find, as well as he can, the exact age of the offender, and is not at liberty to leave the decision of the question to the Reformatory officials. The effect of the notification published by Government regulating the periods for which youthful offenders may be sent to Reformatory Schools in the Madras Presidency, is to fix a minimum period of five years for all cases in which such a period is legally possible; namely, in all cases where the offender is not over thirteen at the date of conviction. It was not intended to prevent the Magistrate from fixing a period short of five years, but not short of three years, in the case of a boy over thirteen.

[24 Mad. page 45.]

(A.) RAMANADHAN CHETTI *vs.*
MURUGAPPA CHETTI.

Criminal Procedure Code—Act V of 1898, section 144—Order to abstain from interfering with the management of a temple until the eviction of another person—Legality of order.

An order passed under section 144 of the Code of Criminal Procedure directed a person (1) not to interfere with the management of a certain temple, (2) until another person should be duly evicted from the management by due course of law.

Held, that the first portion of the order was a direction to "abstain from a certain act" within the meaning of those words as used in section 144 of the Code of Criminal Procedure; but that the latter portion contravened the provisions of sub-section (5) of that section and that to that extent the order was made without jurisdiction.

[24 Mad. page 70.]

(B.) QUEEN-EMPRESS *vs.* SOUTH.

Criminal Procedure Code—Act V of 1898, section 195—Penal Code—Act XLV of 1860, section 188—Epidemic Diseases Act—Act III of 1897—Disobedience to an order promulgated by Government—Sanction for prosecution.

Certain persons were charged with having disobeyed an order promulgated by Govern-

ment under the Epidemic Diseases Act (III of 1897) and were acquitted on the ground that the prosecution required, under section 195 of the Code of Criminal Procedure, the previous sanction of the public servant who had promulgated the order. Sanction had, in fact, been granted by the Chairman of the Municipality in which the order was disobeyed, but the Magistrate held that such Chairman was not the public servant who had promulgated the order, and that it was not shown that he had been specially empowered to grant the sanction.

Held, that the order of acquittal was wrong. Inasmuch as the order in question had been promulgated by Government and not by any public servant, no sanction was required.

[24 Mad. page 81.]

(C.) SUBBA REDDI *vs.* MUNSHOOR
ALI SAHEB.

Penal Code—Act XLV of 1860, section 379—Removal of fish from an ordinary irrigation tank—Charge of theft—Maintainability of charge.

Fish in an ordinary irrigation tank are not in the possession of any person so as to be capable of being the subject of theft. Nor does the removal of such fish constitute any other offence. *Queen vs. Kevu Pothadn* (I. L. R., 5 Mad. 391n), and *Bhagiram Dome vs. Abar Dome* (I. L. R., 15 Cal. 388), referred to.

[24 Mad. page 121.]

(D.) QUEEN-EMPRESS *vs.* MUNDA
SIRETTI.

Criminal Procedure Code—Act V of 1898, section 135—Alleged forgery of documents submitted to Tahsildar holding enquiry as to transfer of names in Land Register—Revenue Court—Necessity for sanction to prosecute offender.

A Tahsildar, when holding an enquiry as to whether a transfer of names in a land register should be made or not, is a Revenue Court; and before a party to any proceeding in such a Court can be prosecuted for an offence referred to in section 195 (c) of the Code of Criminal Procedure, sanction should be obtained.

[24 Mad. page 124.]

(E.) QUEEN-EMPRESS *vs.* PEELI-
MUTHU TEWAN.

Penal Code—Act XLV of 1860, section 144—Unlawful assembly—Evidence of common object.

Two persons were charged with being members of an unlawful assembly armed wit-

deadly weapons for the purpose of committing dacoity. The facts proved were that a crowd of about 100 persons, including the accused, had assembled together, armed with bill-hooks and sticks; and that the crowd had dispersed at once on seeing the police. On these facts the Magistrate assumed that the intention of the members of the crowd was to use criminal force, and, having regard to the weapons with which they were armed, he convicted the accused under section 144 of the Indian Penal Code.

Held, that the prosecution had failed to show that the common object of the crowd was such as would constitute it an unlawful assembly as defined by section 141 of the Indian Penal Code, and that the accused were entitled to be acquitted.

(24 Mad. page 136.)

(A.) KRISHNA REDDI vs SUBBAMMA.

Criminal Procedure Code—Act V of 1898, sections 209, 436—Refusal by Magistrate to charge accused with offence triable exclusively by Court of Session—“Discharge”—Charge of offence triable by Magistrate—Acquittal—Order by Sessions Court for further enquiry and committal—Legality of such order.

Certain persons were charged before a Magistrate of the first class under section 379 of the Indian Penal Code with the theft of a promissory note. The prosecution applied for a further charge to be framed under section 477 of the Indian Penal Code, but this the Magistrate declined to do, as in his opinion, there was no direct evidence that the accused had destroyed or secreted the note. After hearing the evidence for the defence, the Magistrate acquitted the accused under section 258 of the Code of Criminal Procedure. Application was then made to the Sessions Court to call for the records and direct the committal of the accused for trial for an offence under section 477 of the Indian Penal Code. The Sessions Court ordered that a further enquiry be made and that the accused be committed for trial. On its being contended, on revision, that the order of the Sessions Court was illegal on the ground that the accused had been acquitted and not discharged;

Held, that the order of the Magistrate was, in substance an order discharging the accused in respect of an alleged offence under section 477, Indian Penal Code, and that the Sessions Judge had jurisdiction to make the order sought to be revised. *Queen-Empress vs. Hanumantha Reddi* (I. L. R., 23 Mad., 225) considered.

[24 Mad. page 161.]

(B.) QUEEN-EMPRESS vs. SUBRAHMANIA AYYAR.

Bail—Release on bail of a person convicted by Sessions Court of Madras pending appeal to Privy Council—Jurisdiction of High Court.

A person was, at Criminal Sessions held in Madras, convicted of certain offences and sentenced to imprisonment and fine. Upon a certificate being granted by the Advocate-General under section 26 of the Letters Patent, the High Court reviewed the conviction and reduced the sentence. The accused obtained from the Judicial Committee of the Privy Council special leave to appeal, and also applied to be released on bail; but the Judicial Committee expressed the opinion that the latter application should be decided by the Madras High Court. Upon application being made accordingly to the Madras High Court:

Held, that the High Court had jurisdiction to make an order releasing the accused on bail pending the decision of the Privy Council; and that having regard to the rule laid down by the Judicial Committee in *Ex parte Carow* ([1897] A. C., 719), as to the circumstances under which an appeal in a Criminal matter will be admitted by the Privy Council, the accused ought to be released on bail in the present case.

[24 Mad page 195.]

(C.) QUEEN-EMPRESS vs. ALLAN.

District Municipalities Act (Madras)—IV of 1884, section 63 (2), (2)—Levy of tax—Legality.

By section 63 (2) of the District Municipalities Act (Madras), 1884, it is enacted that, except as provided in sub-section (3) of that section and in section 63-A, a tax may be levied at such rate, not exceeding eight and a half per centum, on the annual value of the buildings or lands or both upon which it is imposed, as the Municipal Council may have notified under section 60; and by section 63 (3), in the case of (a) lands not occupied by buildings and not appurtenant to any building or attached thereto for use therewith as a garden or pleasure-ground or for the pasturage of animals kept for private use, and (b) lands occupied by native huts the Chairman may subject to the approval of the Municipal Council and the sanction of the Governor in Council, impose a tax on such lands at an annual rate, not exceeding four annas for every 80 square yards thereof, in lieu of the tax referred to in sub-section (2). Provided that no tax shall be levied under this sub-section upon lands used solely for agricultural purposes.

Held, that, subject to the conditions mentioned, a tax levied under sub-section (8) on all lands within a Municipality is a legal tax.

[24 Mad. page 238.]

(A.) QUEEN-EMPRESS vs. CHEN-CHI REDDI.

Criminal Procedure Code—Act V of 1898, section 556—Disqualification of Magistrate to try a case—Directing the prosecution of an accused—Subsequent trial by same Magistrate—Legality of trial.

A Deputy Tahsildar made a report concerning A to the Tahsildar, who, in turn, reported the matter to the Deputy Magistrate. The latter authorized the Tahsildar to prosecute A, on such charges as might be capable of being proved in a Criminal Court, and a prosecution was accordingly instituted. The case was tried by the same Deputy Magistrate, and on the objection being raised that under section 556 of the Code of Criminal Procedure that Magistrate was disqualified from trying the accused.

Held, that he was not disqualified. The act of the Deputy Magistrate was an authorization and not a direction that the accused should be prosecuted. *Giriah Chunder Ghose vs. The Queen-Emress* (I. L. R., 20 Cal., 837). In the matter of the petition of Ganeshi (I. L. R., 15 All., 192), and *Queen-Emress vs. Narain Singh* (I. L. R., 22 All., 340), referred to.

[24 Mad. page 263.]

(B.) QUEEN-EMPRESS vs. ABDULLA SAHEB.

Criminal Procedure Code—Act V of 1898; sections 144, 487—Order to “abstain from a certain act”—Trial by Magistrate who made the order of persons alleged to have disobeyed it.

On a petition being filed in the Court of a Sub-Divisional First class Magistrate setting out that a breach of the peace was likely to arise from the simultaneous use of a certain mosque by members of the Hanifi and Shafi sects, the Magistrate passed an order addressed to ten members, who were named, and several others of the Hanifi sect, and to three members, who were named, and several others of the Shafi sect. The order concluded as follows:—“I do order hereby that the following order should be observed in regard to the entry

of the said mosque by any of you or any other Musalmans of the Hanifi and Shafi sects for a period of two months from this date unless in the meanwhile you establish your right in a Court of competent civil jurisdiction.” It set out five periods of half an hour each during which each sect, respectively, might enter the mosque on ordinary days, and two periods of one hour each in which each sect might enter the mosque on other days.

Held, that the order was within the powers conferred by section 144 of the Criminal Procedure Code. Certain members of the Hanifi sect having entered the mosque in disobedience to the order hereinbefore referred to, they were charged under section 188 of the Indian Penal Code with disobedience to an order by a public servant. The case was tried by the Magistrate who had passed the order.

Held, that the Magistrate was not competent to try the case, inasmuch as he had made the order under section 144.

[24 Mad. page 271.]

(C.) RATTIGADU vs. KONDA REDDI.

Regulation XI of 1816, section 10—Confinement of Native Christian in stocks—Legality of order.

By section 10 of Regulation XI of 1816 heads of villages are given summary powers of punishment in cases of a trivial nature, such as using abusive language, and if the offenders “shall be of any of the lower castes of the people on whom it may not be improper to inflict so degrading a punishment,” they may be put in the stocks. A person who was a Mala, or Hindu pariah, by birth, and who had become a convert to Christianity, was convicted of having used abusive language and sentenced to two hours’ confinement in the stocks under the said regulation. His profession was that of a weaver, but he, in fact, worked as a cooly. On the question of the legality of the sentence being referred to the High Court;

Held, that to render a person liable to confinement in the stocks under the regulation there must be a concurrence of two circumstances, viz., (1) he must be a person belonging to one of the lower castes of the people, and (2) he must be a person on whom from his social standing or otherwise it may not be improper to inflict so degrading a punishment. That the test is not what is the offender’s creed, but what is his caste. *Semble*, that a person who has changed his creed but continues to belong to his caste may be within the purview of the regulation if the caste is of the nature therein referred to, but if he abandons his caste he cannot longer be said to “belong to one of the lower castes of the people” and punishment by confinement in the stocks would no longer be legal. The *Queen vs. Nabi* (I. L. R., 6 Mad., page 247) discussed.

[24 Mad. page 284.]

(A) JAGANNADHA RAO vs.
KAMARAJU.

Penal Code—Act XLV of 1860, sections 361, 363, 366—Kidnapping from lawful guardianship—“Lawful guardian”—Continuance of parent's possession though physical possession temporarily with another.

S, a girl of the age of eight years, lived ordinarily under the guardianship of her father. A sister of S was married to a nephew of one K and, with her husband, lived in the house of K. S, with her father's knowledge and consent, visited her sister in K's house, and has remained there for about a month when four brothers (being cousins of S) came to K's house one night and took S to their own house, which was close by, and S was at once married to one of them. The father of S was not asked for his consent, and it was known by the nephews and by K that the father objected to such a marriage. K was present at the marriage and consented to it, hoping to reconcile the girl's father to it subsequently. The father, however, sought the aid of the police, to whom S was given up by her cousins after having been detained by them in their house for thirty-six hours. The four cousins were then charged, under section 366 of the Indian Penal Code, with kidnapping S from lawful guardianship with intent that she might be compelled to marry one of them. The charge was framed in general terms and did not state from whose guardianship the kidnapping was alleged to have taken place. The trial was, however, conducted on the footing that the kidnapping was from the guardianship of K. The accused were acquitted, on the ground that K was at the time the lawful guardian of the girl and it had not been shown that she had been taken without K's consent. Upon an appeal being preferred by Government against that acquittal;

Held, that the accused had been rightly acquitted of the charge of kidnapping S from the guardianship of K; but that the question whether they were guilty of kidnapping S from the guardianship of her father had not been and ought to be tried. The word “include” in the explanation to section 361 of the Indian Penal Code is not intended to limit the protection which the section gives to parents and minors, but rather to extend that protection by including in the term “lawful guardian” any person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or friend for a limited purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the Criminal Law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping even though the actual possession should be temporarily with a friend or other person.

sion should be temporarily with a friend or other person.

[24 Mad. page 305.]

(B.) QUEEN-EMPRESS vs.
YAMANA RAO.

Court Fees Act, VII of 1870, section 21—Criminal Procedure Code—Act V of 1898, section 545—Order for payment of expenses of prosecution out of fine—No payment to complainant of fees paid in Criminal Courts

A person who was convicted by a Deputy Magistrate of having caused hurt, was ordered to pay a fine of Rs. 15, and also the complainant's costs of the prosecution. In the month following the conviction the Deputy Magistrate issued a warrant for the collection of Rs. 12-4-0 from the accused, of which Rs. 2-4-0 was levied under section 31 of the Court Fees Act as court-fees paid by the complainant, and Rs. 10 under section 545 of the Code of Criminal Procedure for two fees of Rs. 5 each paid by the complainant to the medical officer for a certificate and for giving evidence in the case. Objection having been made to the recovery of these sums, the case was referred to the High Court for orders.

Held, that the levy of court-fees was warranted by section 31 of the Court Fees Act, which is not modified by section 545 of the Code of Criminal Procedure.

Held, also, that the Deputy Magistrate's order passed under section 545 of the Code of Criminal Procedure for the payment of expenses incurred in the prosecution was unsustainable, and such expenses could only be awarded to the complainant out of the fine levied from the accused and not in addition to it.

[24 Mad. page 317.]

(C.) QUEEN-EMPRESS vs. KUPPU
MUTHU PILLAI.

Criminal Procedure Code—Act V of 1898, section 528—Transfer of case at request of Magistrate—Notice.

An order for the transfer of a case, made at the request of the Magistrate on whom the case stands, and not on the application of a party, is an exception to the general rule that an order for transfer should not be made under section 528 of the Code of Criminal Procedure without notice to the other side.

[24 Mad. page 318.]

(4.) QUEEN-EMPRESS vs. LAKSH-MANNA.

Cattle Trespass Act—Act I of 1871, section 24—Rescue of cattle after seizure for trespassing on public property—Conviction—Omission to record finding as to whether locality was public property—Legality of conviction.

Certain persons had been fined for rescuing cattle after seizure under section 24 of the Cattle Trespass Act, 1871. The judgment contained no finding to the effect that the land on which the cattle had been seized was public property in charge of the Public Works Department.

Held, that the conviction must be set aside and the case remanded.

[24 Mad. page 319.]

(B.) QUEEN-EMPRESS vs. VIRA-SAMI.

Court Fees Act, VII of 1870 (as amended by Act XII of 1891), section 34—Stamp Act—Act II of 1899, section 69—Sale by thief of stolen stamps—Offence.

A person who had been convicted of stealing two stamps was charged, under section 69 of the Stamp Act, 1899, with having sold them, he not being a licensed vendor of stamps.

Held, that the words "sells or offers for sale," which occur in section 69 of the Stamp Act and in section 34 of the Court Fees Act, include the case of a thief who exchanges a stolen stamp for a sum of money, even though the thief cannot give a legal title by the transaction.

[24 Mad. page 321.]

(C.) QUEEN-EMPRESS vs. RAMA-SAMI.

Criminal Procedure Code—Act V of 1898, sections 337, 339—Pardon—Withdrawal of pardon and commitment for trial—Procedure.

R was charged with having committed the offence of dacoity, with others. In consequence of a confessional statement made by R, pardon was tendered to him by the Stationary Sub-Magistrate, under the District Magistrate's order. R was subsequently examined as a witness for the prosecution at a preliminary

enquiry into the dacoity held by the Magistrate under Chapter XVIII of the Code of Criminal Procedure, but he retracted his former statement (which, he said, had been made in consequence of police torture), and asserted that he knew nothing about the dacoity. The dacoity case came on for trial in the Sessions Court, but R was not called as a witness, and, in the end, the persons charged were acquitted. Upon the subsequent application of the police, the District Magistrate withdrew the pardon which had been tendered to R, on the ground that the latter had withdrawn and contradicted his first statement. R was in due course charged before the same Sub-Magistrate with having been one of the dacoits, and was committed for trial.

Held, that the commitment was legal. The words "in the case," which occur in section 337 (2) of the Code of Criminal Procedure, include a preliminary enquiry, and do not refer to the trial alone. If there is reason to believe that a person to whom pardon has been tendered will give false evidence, there is no duty on the prosecution to put him forward as a witness. Pardon conditionally granted may be at once withdrawn as soon as good faith has been broken, and good faith is broken if the witness does not disclose the truth to the Magistrate. The proper authority to withdraw a pardon is the authority which granted it. *Queen-Empress vs. Manick Chandra Sarkar* (I. L. R., 24 Cal., 492) followed. *Semble*, that when pardon is revoked, no steps should be taken against the person who so forfeits it until after the trial of the other accused is over; and that his trial should then proceed *de novo*. *Queen-Empress vs. Brij Narain Man* (I. L. R., 20 All., 529, and *Queen-Empress vs. Bhau* (I. L. R., 23 Bom., 493), considered.

[24 Mad. page 337.]

(D.) QUEEN-EMPRESS vs. KUNTI-YIL RARU.

Criminal Procedure Code—Act V of 1898, section 203—Dismissal of complaint—Refusal by Magistrate to take cognizance of case—Subsequent trial by him.

A complaint was laid in the Court of a Town Magistrate, charging certain persons with having committed offences under the Registration Act. The Town Magistrate dismissed the complaint on the ground that sanction, which he deemed to be necessary, had not been obtained. The complainant obtained sanction and thereupon the Town Magistrate proceeded with the case and convicted the accused. On appeal, the Deputy Magistrate, while agreeing that the accused were guilty, reversed the conviction on the ground that inasmuch as the Town Magistrate had once thrown out the complaint under section 203 of the Code of Criminal Procedure, he could not subsequently entertain it. On

the case being referred to the High Court for orders:

Held, that though, in form, the Town Magistrate's order purported to dismiss the complaint under section 203, in substance it refused to take cognizance of the offence on the ground that sanction was necessary and had not been obtained; and that the acquittal must be set aside.

[24 Mad. page 414.]

(A.) *QUEEN-EMPRESS vs. DORA-SAMI AYYAR.*

Criminal Procedure Code—Act V of 1898, section 288—Statement of witness before committing Magistrate treated as evidence at trial before Court of Session—"Evidence duly taken."

Under section 288 of the Code of Criminal Procedure the court is not restricted to admitting the evidence of a witness duly taken before the committing Magistrate merely for the purpose of contradicting that witness when he is called as a witness at the Sessions Court. The section is intended to enable the Court to read the previous evidence as substantive evidence in the case, at the trial, where, for the purposes of justice, the adoption of such a course is found necessary by the Judge.

[24 Mad. page 417.]

(B.) *QUEEN-EMPRESS vs. GAN-GAYYA.*

Abkari Act (Madras), I of 1896, section 55 (g)—"Wash" fit for distillation—"Materials" for manufacturing liquor.

A liquid mixture known as "wash," consisting of jaggery and babool bark and proved to be fit for distillation, constitutes "materials" for the purpose of manufacturing liquor within the meaning of section 55 (g) of the Abkari Act.

[24 Mad. page 523.]

(C.) *KING EMPEROR vs. TIRUMAL REDDI.*

Criminal Procedure Code—Act V of 1898, sections 285, 537—Commencement of trial for murder by Judge and two assessors—Absence of one assessor during portion of the trial—Resumption of his seat by assessor and his opinion expressed and recorded by the Judge—Legality of trial—Conspiracy Abetment—Penal Code—Act XLV of 1860, section 109.

A trial for murder, conspiracy to murder, and abetment of murder, duly commenced

before a Sessions Judge and two assessors, and continued for about seven weeks. During that period one of the assessors was permitted to absent himself during two whole days, and five half days, respectively; at first, so that he might visit his mother on her death-bed, and subsequently, to perform the daily obsequies rendered necessary by her decease. He then resumed his seat as an assessor and continued so to act until the termination of the trial, all the depositions recorded in his absence having been read by him on his return. At the conclusion of the trial the Sessions Judge invited the opinion of each assessor, and recorded it. The opinion of each was that all the accused were guilty and the Judge, concurring in that opinion, convicted the accused. The prisoners appealed to the High Court, where it was contended that the Judge had acted contrary to law in allowing the assessor who had been absent to resume his seat as an assessor, and in inviting and taking into consideration his opinion in deciding the case; and that the conviction ought to be quashed.

Held (DAVIES, J., dissenting), that the finding and sentence appealed against had been passed by a Court of competent jurisdiction within the meaning of section 537 of the Code of Criminal Procedure and that the defect in the trial did not affect its validity and was cured by that section if the irregularity had "not in fact occasioned a failure of justice"; and that no such failure of justice had been shown: *Per BHASHYAM AYYANGAR, J.*—Under the Indian Penal Code conspiracy, except in cases provided for by sections 311, 400, 401, 402 and 121A of the Code, is a mere species of abetment where an act or an illegal omission takes place in pursuance of that conspiracy, and amounts to a distinct offence for each distinct offence abetted by conspiracy.

[24 Mad. page 641].

(D.) *KING-EMPEROR vs. KRISHNA AYYAR.*

Criminal Procedure Code—Act V of 1898, section 408 (4)—Previous acquittal—Acquittal by assessors on charge of abetment of dacoity with murder—Subsequent conviction by jury of receiving stolen property—"Court competent to try the offence subsequently charged."

Five persons were charged before a Sessions Judge, sitting with assessors, with having committed dacoity with murder, under section 390, Indian Penal Code, and a sixth with abetting them. The abettor was acquitted. He was, however, subsequently charged before the Sessions Judge, sitting with a jury, with receiving stolen property knowing that it had been obtained by dacoity, under section 412 of the Indian

Penal Code. The jury returned a verdict of guilty, and the accused was convicted and sentenced. The facts on which the accused was convicted of receiving stolen property were the same as those upon which he had been acquitted of abetment of dacoity with murder, the dacoity by which the stolen property was alleged to have been received being the same as that which had formed the subject of the previous charge. On its being contended that the Court had power to try the accused a second time under sub-section 4 of section 403 of the Criminal Procedure Code, inasmuch as a charge of receiving stolen property must be tried by a jury; and that in consequence the Court by which the accused had first been tried was not a Court competent to try the present charge:

Held, that the conviction was bad.

[24 Mad. page 660.]

(A.) KING-EMPEROR vs. TAKASI
NUKAYYA.

Workman's Breach of Contract Act—Act XIII of 1859, sections 1, 2—Failure to comply with order of Court—Criminal Procedure Code—Act V of 1898, section 4 (c)—“Offence.”

The offence created by the Workman's Breach of Contract Act (XIII of 1859) is not the neglect or refusal of the workman to perform his contract, but the failure on his part to comply with an order made by the Magistrate directing the workman to repay the money advanced or perform the contract.

[24 Mad. page 662.]

(B.) KING-EMPEROR vs. ANTANKE.

Penal Code—Act XLV of 1860, section 317—Exposure of child with intention to abandon—Ingredients of offence.

Upon a charge being preferred against a mother of exposure and abandonment of her child, under section 317, Indian Penal Code, the Sessions Judge believed that the accused had left the child at a particular spot with the intention that it should be found and cared for by the owner of a neighbouring house. He acquitted her, holding that the offence charged had not been committed, inasmuch as the child had been deliberately placed where it would be (as in fact it was) found and looked after.

Held, that the acquittal was wrong. The gist of the offence under section 317 is the exposure or leaving with intention to wholly abandon, and the manner of exposing or leaving, and the consequences likely to ensue, are not essential ingredients, though they may be taken into consideration in passing sentence.

[24 Mad. page 675.]

(C.) KING-EMPEROR vs. AYYAN.

Criminal Procedure Code—Act V of 1898, section 530—Trial of an accused by Magistrate not empowered by law—Charge of giving false evidence under section 193, Indian Penal Code—Trial by First-class Magistrate though facts disclosed offence under section 194 as well—Jurisdiction.

Certain witnesses made statements in a preliminary enquiry before a Magistrate, in a case of alleged murder, and contradicted those statements at the trial before the Court of Session. The latter then sanctioned their prosecution for giving false evidence in a judicial proceeding, an offence punishable under section 193 of the Indian Penal Code, and triable by a Magistrate of the first class. The Deputy Magistrate, by whom they were tried, convicted them, and the accused appealed, the appeals being transferred to another Sessions Court for hearing. The Sessions Judge held that, inasmuch as the false statements had been made in connection with a charge of murder, the offence for which the accused should have been tried fell under section 194, Indian Penal Code, and that, in consequence, they could be tried only by a Court of Session and not by a Magistrate of the first class. He considered their trial by a First-class Magistrate to be void under section 530 of the Code of Criminal Procedure, and set aside their conviction, committing one of them for trial by a Court of Session on a charge under section 194 of the Indian Penal Code, and making no order in respect of the other accused as he considered the imprisonment already undergone was sufficient.

Held, that the order was wrong as the proceedings of the First-class Magistrate were not void within the meaning of section 530 of the Code of Criminal Procedure. *Queen-Empress vs. Gundyia* (I. L. R., 13 Bom., 502) referred to.

[25 Mad. page 15.]

(D.) THE MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS vs. MAJOR BELL.

Criminal Procedure Code—Act V of 1898, section 197—Necessity for sanction to prosecute public servant—Cases in which the fact that accused is a public servant is a necessary element in the offence—City of Madras Municipal Act (Madras)—Act of 1884, section 341.

Under section 341 of the City of Madras Municipal Act, any person bringing or causing to be brought timber within the City of Madras without a licence, obtained on payment of a fee, is liable to a fine. The Super-

intendent of the Gun-Carriage Factory in Madras, who is an officer holding a commission in the Royal Artillery, brought or caused to be brought timber within the aforesaid limits without license. On a complaint being lodged against him under the section, it was contended that he was a public servant within the meaning of section 197 of the Code of Criminal Procedure and that the Court could not take cognizance of the offence, inasmuch as the sanction referred to in section 197 had not been obtained.

Held, that sanction was not necessary, as the offence charged was not one which could be committed only by a public servant, nor did it involve as one of its elements that it had been committed by a public servant. *Nando Lal Basak vs. Mitter* (I. L. R., 26 Cal., 852) followed.

[25 Mad. page 143.]

(A.) KING-EMPEROR vs. MOHIUDDIN SAHIB.

Evidence Act—I of 1872, sections 114, 183—Evidence of accomplice—Corroboration.

Certain persons were charged with the murder of N. The confessional statement of one of them and the evidence of an approver showed that accused first attacked N at a spot described as D; that they then carried him from D to a spot described as E; and that from E they carried him to a spot described as F, where he was killed. Three other witnesses deposed to the presence of the accused at D.

Held, that the evidence of the approver was sufficiently corroborated to justify a conviction. *Reg. vs. Wilkes* (7 C. & P., 274) and *Queen vs. Elahi Bax* [B. L. R., Sup. Vol. (F. B.), 459] referred to.

[25 Mad. page 457.]

(B.) BELL vs. THE MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS.

City of Madras Municipal Act (Madras)—Act I of 1884, section 341—Liability of Government under taxing Acts when not expressly mentioned—Prerogatives of the Crown—Indian Councils Act, 1861—24 & 25 Vict., chapter 67, section 42.

The Superintendent of the Government Gun-Carriage Factory in Madras having brought

timber belonging to Government into Madras without taking out a license and paying the license fees prescribed by section 341 of the City of Madras Municipal Act, was prosecuted to conviction by the Municipal Commissioners.

Held, on revision, that timber brought into Madras by or on behalf of Government is liable to the duty imposed by section 341 of the City of Madras Municipal Act, although Government is not named in the section. According to the uniform course of Indian Legislation, Statutes imposing duties or taxes bind Government unless the very nature of the duty or tax is such as to be inapplicable to Government. *Per curiam*.—Under the Indian Councils Act, 1861, a Provincial Council has, subject to the same restrictions as those imposed by the Act on the Governor-General's Council, power to affect the prerogative of the Crown by Legislation.

[25 Mad. page 525.]

(C.) KING-EMPEROR vs. BALU KUPPAYAN.

Stamp Act—Act II of 1899, section 32.—Seizure of documents under search-warrant—Document that "comes" before a Magistrate.

Complaint having been made against a person for having committed offences under sections 64 (c) and 68 (c) of the Stamp Act of 1899, the Magistrate issued a search-warrant, under which certain documents were seized and impounded under section 33 (2) of the Act. On its being contended that his action in impounding them was illegal, because the documents did not come before him in the performance of his functions within the meaning of section 33 (1):

Held, that the word "comes" is sufficiently wide to include the production of documents under a search-warrant.

[25 Mad. page 534.]

(D.) KING-EMPEROR vs. KRISHNAYYA.

Criminal Procedure Code—Act V of 1898, section 421—Summary dismissal of appeal—Judgment.

A Court, when dismissing an appeal summarily under section 421 of the Code of Criminal Procedure, is not bound to write a judgment in conformity with the provisions of section 367.

[26 Mad. page 546.]

(A.) KING-EMPEROR vs. ALA-GARIŞAMI PATHAN.

Criminal Procedure Code—Act V of 1898, section 202—Failure to “record reasons” for postponing issue of process and inquiring into case—Irregularity.

By section 203 of the Criminal Procedure Code, if a Magistrate is not satisfied as to the truth of an offence he may, when the complainant has been examined, “record his reasons, and may then postpone the issue of process” and inquire into the case.

Held, that the failure on the part of a Magistrate to record his reasons is at most an irregularity, and unless it in fact occasions a failure of justice is not a ground for setting aside his order.

[26 Cal. page 49.]

(B.) BASANTA KUMAR GHATTAK vs. QUEEN-EMPRESS.

Evidence in Criminal Case—Criminal Procedure Code (Act X of 1882), section 342—Statement of accused under that section—Misdirection.

A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under section 342 of the Criminal Procedure Code. It is a misdirection to ask the jury to consider a document, purporting to be proved by such a statement, as evidence against the accused.

[26 Cal. page 158.]

(C.) BAJOO SINGH vs. QUEEN-EMPRESS.

Public Servant—Penal Code (Act XLV of 1860), section 21 and section 186—Surveyor employed by the Collector.

The Collector acting in the management of a *khas mehal*, the property of the Government, is as much “the Government” within the meaning of section 17 of the Penal Code as when he is exercising any other of the duties of his official position. A surveyor employed by the Collector in the *khas mehal* department to make a survey of a certain portion of a water-course is a “public servant” within the meaning of section 21 of the Penal Code. Reg. vs. Ramajird, 13 Bom. H.C. 1, and Chatter Lal vs. Thakoor Pershad, 1 L. Cal. 419, referred to.

[26 Cal. page 181.]

(D.) BACHU LAL vs. JAGDAM SAHAL.

Compensation—Sanction to prosecute and award of compensation—Criminal Procedure Code (Act V of 1898), section 250 and section 476—Magistrate, Discretion of.

It is an improper exercise of his discretion by a Magistrate to award compensation to the accused under section 250 of the Criminal Procedure Code, and also to direct or sanction the prosecution of the complainant under section 211 of the Penal Code for bringing a false charge. Shib Nath Chong vs. Sarat Chunder Sarkar (1 L. R. 22 Cal. 586) followed. Queen vs. Rupan Rao, 6 B L R. 296; 15 W. R. Cr., 9, referred to.

[26 Cal. page 188.]

(E.) HURBULUBH NARAIN SINGH vs. LUOHMESWAR PRASAD-SINGH.

Superintendence of High Court—Charter Act (24 and 25 Vic., Chapter 104), section 15—Criminal Procedure Code (Act V of 1898), sections 143, 435—Power of Local Legislature—Power of Revision by High Court—Order concerning a ferry purporting to be made under section 145.

The Local Legislature has power to overrule a statutory power conferred on the High Court; but this was not the object and result of the legislation expressed in section 435 of the Criminal Procedure Code of 1898. Empress vs. Burah (1 L. R. 4 Cal. 172) L. R. 5 I. A., 178, referred to. The terms of section 435 mean that orders under the exempted sections mentioned in clause (3) must have been passed with jurisdiction. If such orders are challenged as made without jurisdiction, the mere fact of their purporting to be passed under the exempted sections would not bring them within those sections so as to debar the exercise of powers by the High Court under section 15 of the Charter Act. Abayeswari Debi vs. Siddheswari Debi (1 L. R. 16 Cal. 80); Ananda Chandra Bhattacharjee vs. Stephen (1 L. R. 19 Cal. 127); Roop Lal Das vs. Manook (2 C. W. N. 572) and Queen-Empress vs. Pratap Chunder Ghose (1 L. R. 25 Cal. 832), followed.

The right to carry passengers to and fro, cannot be treated apart from the possession of the lands used on either side of the stream for the purpose of landing them. It is a proper case to be dealt with under section 145 of the Criminal Procedure Code (Act V of 1898), where the subject-matter of dispute is a ferry, including the land and water upon which the right of ferry is exercised.

[26 Cal. page 232.]

(A.) KANAI DAS BAIRAGI vs. RADHA SHYAM BASACK.

Penal Code (Act XLV of 1860), section 486
— Selling books with counterfeit property
mark—Goods—Indian Merchandise Marks
Act (IV of 1889).

Books are the subject of trade and are goods within the meaning of section 2, clause (4) of the Indian Merchandise Marks Act (IV of 1889); therefore, when a person sells books with a counterfeit property mark, he commits an offence under section 486 of the Indian Penal Code.

[26 Cal. pag 336.]

(B.) THE DEPUTY LEGAL REMEMBRANCER vs. SARNA KAHMI.

Bigamy—Complaint by the husband—"Person aggrieved"—Criminal Procedure Code (Act V of 1898), section 198—Penal Code (Act XLV of 1860), section 494.

The husband is a "person aggrieved" within the meaning of section 198 of the Criminal Procedure Code, upon whose complaint the Court should take cognizance of an offence under section 494 of the Penal Code. *Queen-Empress vs. Rukshmoni* (I. L. R. 10 Bom., 240.) and in the matter of *Ujjala Bewa* (I. C. L. R., 523,) referred to

[26 Cal. page 359]

(C.) CHANDRA MOHAN BANERJEE vs. BALFOUR.

Sanction for Prosecution—Criminal Procedure Code (Act X of 1882), section 195—Presidency Magistrate, Jurisdiction of—Penal Code (Act XLV of 1860), sections 116, 193—Abetment—Instigating person to give false evidence.

B, without having obtained sanction under section 195 of the Criminal Procedure Code, charged C before the Chief Presidency Magistrate with instigating her to give false evidence in a certain divorce suit in which C was co-respondent.

Held, that the Chief Presidency Magistrate had no jurisdiction to try the case without the sanction of the Court before which the divorce proceedings were pending, as the offence charged was alleged to have been committed in relation to those proceedings.

[26 Cal. page 360.]

(D.) QUEEN-EMPRESS vs. MATI LAL LAHIRI.

Penal Code—Act XLV of 1860, section 477A—Criminal Procedure Code (Act V of 1898), sections 222 (2), 284—Criminal breach of trust by public servant—Acquittal—Framing new charge—General falsification of accounts for a period extending over two years.

The alteration in the law by section 222 (2) of the Criminal Procedure Code (Act V of 1898) does not apply to a charge under section 477A of the Penal Code. It applies only to criminal breach of trust or dishonest misappropriation of money.

[26 Cal. page 569]

(E.) QUEEN-EMPRESS vs. SALEM UD DIN SHEIK.

Confession—Confession to Police Officer—Evidence Act (I of 1872), section 25.

The provisions of section 25 of the Indian Evidence Act (I of 1872), which declares that no confession made to a Police Officer shall be proved as against a person accused of any offence, applies to every Police officer and is not to be restricted to officers of the regular Police force.

[26 Cal. page 371.]

(F.) UMESH CHUNDER GHOSE vs. QUEEN-EMPRESS.

Opium Act (I of 1873), sections 5 and 9—Licensed Vendor, Liability of, under section 9, for keeping incorrect accounts.

Section 5 of the Opium Act (I of 1873, declares that the Local Government) with the previous sanction of the Governor-General in Council, may make rules consistent with the Act regulating the sale of opium. Under this section rules were issued by the Government of Bengal with the previous sanction of the Governor-General in Council on the 21st February 1898, rule 15 (1) of which declares that a person to whom a license has been granted may sell opium by retail in accordance with the conditions specified in the license. The conditions of the license for retail sale of opium are contained in Form No. 1 made under rule 15. Under article 18 of this form, the holder of the license is to keep a daily correct account

showing the quantity of opium received and sold, and other details. Article 18 sets out that on infingement of any of the conditions contained in the form or imposed by the Opium Act the license may be cancelled. The petitioner, a licensed vendor of opium, was convicted of having kept incorrect accounts in contravention of the rules made under section 5 of the Opium Act, and having thereby committed an offence punishable under section 9 of that Act. He was sentenced to pay a fine of Rs. 200, and in default of payment to undergo rigorous imprisonment for four months.

Held, that the conviction and sentence must be set aside, there being nothing in any of the rules made under section 5 of the Act which would make the preparation of an incorrect account punishable under section 9.

[26 Cal. page 374.]

(A.) ANANT PANDIT *vs.* MADHU-
SUDAN MANDAL.

Rioting—Unlawful assembly—Right of private defence of property—Causing hurt in furtherance of common object—Penal Code (Act XLV of 1860), sections 147, 323.

The party of the accused accompanied by R, went armed with *lathis* to fish in a tank in which R had a two annas share. The complainant, who with some other co-sharers represented an eleven annas interest in the tank, went there with some of these co-sharers, to protest on the ground that the accused had no share or interest in the tank. A fight ensued, in the course of which some of the complainant's party received slight injuries.

Held, that the accused were rightly convicted of rioting and voluntarily causing hurt under sections 147 and 323 of the Penal Code. Ganouri Lall Das *vs.* Queen-Empress, 1 L. R., 16 Cal., 206, followed. Pachkauri *vs.* Queen-Empress, 1 L. R., 24 Cal., 686, referred to.

[26 Cal. page 376.]

(B.) JIB LALGIR *vs.* JOGMOHAN GIR.

Recognisance to keep peace—Criminal Procedure Code (Act V of 1898), section 106—Security for keeping the peace on conviction—Conviction under section 143 of the Penal Code (Act XLV of 1860).

Conviction of a person under section 143 of the Penal Code is not necessarily a ground for making an order against him under sec-

tion 106 of the Criminal Procedure Code. In order to bring his acts within the terms of the latter section, there must either be an express finding to the effect that his acts involved a breach of the peace, or an evident intention of committing the same, or the evidence must be so clear as to satisfy the Court (without an express finding) that such was the case.

[26 Cal. page 625.]

(C.) DOULAT KOER *vs.* RAMESWARI
KOERI *alias* DULIN SAHEBA.

Criminal Procedure Code (Act V of 1898), section 145—Possession, Order of Criminal Court as to—Jurisdiction of Magistrate—Order made by a Civil Court—Power of Revision by the High Court.

It is the duty of the Magistrate when the right to possession has been declared within a time not remote from his taking proceedings under section 145 of the Criminal Procedure Code to maintain any order which has been passed by any competent Court; and therefore to take proceedings which necessarily must have the effect of modifying or even cancelling such orders, is to assume a jurisdiction which the law does not contemplate. The power of revision to be exercised by the High Court is limited to matters of jurisdiction, that is to say, to cases in which it is found that the Magistrate by taking proceedings under section 145 has acted without jurisdiction.

[26 Cal. page 630.]

(D.) TAFAZZUL AHMED CHOWDHURY
vs. QUEEN-EMPRESS.

Penal Code (Act XLV of 1860), section 353—Deterring a public servant from discharge of his duty—Public servant acting under warrant of attachment—Non-production of the warrant at the trial.

One of the accused was convicted under section 353 of the Penal Code (assaulting or using criminal force to a public servant in the execution of his duty) and two others of the abetment of an offence under that section. But the warrant of attachment under which the public servant was acting, was not produced at the trial, nor was any secondary evidence given to show its contents.

Held, in the absence of any evidence as to the terms of the warrant either by the production of the original or in the form of secondary evidence it was impossible to hold that the conviction was good.

[26 Cal. page 746.]

(A.) COLVILLE vs. KRISTO KISHORE BOSE.

Revision—High Court's power of revision—Presidency Magistrate, Proceedings of—Order for further inquiry—Criminal Procedure Code (V of 1898), sections 423, 435 and 439—Letters Patent, High Court, 1865, clause 28.

The High Court has under sections 435 and 439, read with section 423 of the Criminal Procedure Code, the power to revise the proceedings of a Presidency Magistrate and order a further inquiry to be made. It has the same power under clause 28 of the Letters Patent of 1865.

[26 Cal. page 748.]

(B.) SATISH CHANDRA RAI vs. JODU NANDAN SINGH.

Warrant of Arrest—Criminal Procedure Code (Act V of 1898), section 80—Notification of substance of warrant—Penal Code (Act XLV of 1860), section 225 B.

An arrest by a Police officer without notifying the substance of the warrant to the person against whom the warrant is issued, as required by section 80 of the Criminal Procedure Code, is not a lawful arrest, and resistance to such an arrest is not an offence under section 225 B of the Penal Code.

[26 Cal. page 786.]

(C.) JAGAN CHANDRA MOZUMDAR vs. QUEEN EMPRESS.

Magistrate, Jurisdiction of—Criminal Procedure Code (Act V of 1898), section 190, sub-section (1), clauses (a) and (c), and section 191—Taking cognizance of offence by Magistrate upon receiving a complaint of facts—Right of the accused to claim a transfer—Penal Code (Act XLV of 1860), sections 193 and 195—Sanction unnecessary when offence alleged to have been committed in the course of an investigation by the police—Interference by the High Court in a pending case.

The complainant made a complaint to the Magistrate by a petition in which he named

three persons and charged them with offence under certain sections of the Penal Code. The Magistrate thereafter examined the complainant and some witnesses on his behalf and issued summonses against the three persons mentioned in the petition of complaint as well as against the petitioner in this case for an offence other than those mentioned in the said petition.

Held, the Magistrate took cognizance of the offence as against the petitioner under clause (a) and not clause (c) of sub-section (1) of section 190, and consequently he was not debarred by section 191 of the Criminal Procedure Code from trying the case. No sanction under section 195 of the Criminal Procedure Code is necessary for taking cognizance of an offence under section 193 of the Penal Code when the alleged false evidence is said to have been fabricated, not in relation to any proceeding pending in any Court, but in the course of an investigation by the police into the matter of an information received by them. It is inadvisable to interfere in a pending case unless there is some manifest and patent injustice apparent on the face of the proceedings and calling for prompt redress.

[26 Cal. page 832.]

(D.) NANDO LAL BASAK vs. MITTER.

Sanction for prosecution—Sanction to prosecute a Judge—Power of High Court to revise an order as to sanction under section 197 of the Criminal Procedure Code—Criminal Procedure Code (Act V of 1898), section 197 and section 439—Charter Act (24 and 25 Vict., Cap. 104), section 15.

A pleader applied to the Chief Presidency Magistrate for sanction under section 197 of the Criminal Procedure Code to prosecute an Honorary Magistrate for using insulting and defamatory language towards him in the course of the trial of a case and sanction was refused. On application to the High Court:

Held—Under the revisional powers conferred by the Criminal Procedure Code the High Court has no authority to interfere with an order made by a Subordinate Court granting or refusing sanction under section 197 of the Code, but it has sufficient authority for that purpose under section 15 of the Charter Act (24 and 25 Vict., Cap. 104). No sanction under section 197 of the Code is necessary, unless the Judge or public servant commits an offence in his judicial or official capacity. *Reg. vs. Parashram Keshav*, 7 Bom. H. C. Cr. 61, *Empress vs. Lakshman Sakharam*, I. L. R., 2 Bom. 481, and *In re Sreemanto Chatterjee*, unreported, approved of. *In re Gulam Mahammad*, I. L. R., 9 Mad., 439, disapproved.

Cal. page 863.]

(A.) LALA OJHA vs. QUEEN-
EMPRESS.

Attempt to commit offence—Power of
Appellate Court to alter charge or finding
—Prejudice to the accused—Necessity
for a re-trial on the altered charge—
Criminal Procedure Code (Act V of 1898),
sections 236, 237, 238 and 423.

The accused gave his pleader a copy of a document which had been falsified by an interpolation being made in it for the purpose of its being used in the trial of his suit.

Held, that he was guilty, not of an attempt to commit an offence under section 471 of the Penal Code, but of the offence itself. If the prosecution establishes certain acts constituting an offence and the Court misapplies the law by charging and convicting an accused person for an offence other than that for which he should have been properly charged, and if, notwithstanding such error, the accused has by his defence endeavoured to meet the accusation of the commission of these acts, then the Appellate Court may alter the charge or finding and convict him for an offence which those acts properly constitute, provided the accused be not prejudiced by the alteration in the finding. Such an error is one of form rather than of substance, and the alteration by an Appellate Court of the charge or finding would not necessitate a re-trial expressly on a charge of that offence.

[26 Cal. page 869.]

(B.) KAILASH CHUNDER SEN vs.
RAM LAL MITTRA.

Nuisance—Criminal Procedure Code (Act V of 1898), section 133—Bona fide question of title—Obstruction to a public way
—Jury—Verdict on inspection of locality without taking evidence—Criminal Procedure Code (Act V of 1898), section 138
—Use of discretion in nomination of Jurors by Magistrate.

A jury cannot decide a matter referred to them merely on inspection of the locality without taking any evidence. In nominating the foreman and one half of the remaining members of the jury, as required by section 138 of the Criminal Procedure Code, the Magistrate must exercise his own independent discretion and not appoint the nominees of the parties.

When the person called upon under section 133 of the Criminal Procedure Code to show cause why an obstruction should not be removed

from a public way, denies that it is a public way, it is for the Magistrate to determine whether this is a *bona fide* objection, and he cannot, in spite of the objection (unless he determines that it is not *bona fide*), refer the matter to a jury.

[26 Cal. page 874.]

(C.) SOONDERJEE NANJEE vs.
MAYLON.

Revision—High Court's power of revision
—Withdrawal of the operation of the Criminal Procedure Code—Scheduled Districts Act (XIV of 1874), section 6—Assam Frontier Tracts Regulation, 1880, section 2—Jurisdiction of the High Court
—Power of the Supreme Council.

The effect of the rules laid down by the Chief Commissioner of Assam under section 6 of the Scheduled Districts Act (XIV of 1874), taken in conjunction with the notification issued by him in the exercise of the powers conferred by section 2 of the Assam Frontier Tracts Regulation, 1880, directing that the Criminal Procedure Code should cease to operate in the North Cachar Hills from the date of the notification, is to supersede all previously existing criminal authority in that district by that of the Chief Commissioner. The power of the Supreme Legislative authority of India to remove any place or territory from the jurisdiction of the High Court is, as was said in *Empress vs. Burah*, 1 L. R., 4 Cal., 172; L. R., 51 A., 178, "expressly authorized and contemplated" by the Statutes and Letters Patent which affect the constitution and jurisdiction of the Court. *Semle*—Notwithstanding the withdrawal of the operation of the Criminal Procedure Code from a certain District, the High Court may continue to exercise appellate and revisional powers over that District.

[27 Cal. page 126.]

(D.) CHAROOBALA DABER vs.
BARENDRA NATH MOZUMDAR

Revision—High Court's power of revision
—Presidency Magistrate, Proceedings of
—Order for further inquiry—Criminal Procedure Code (V of 1898), sections 423, 425, 439—Charter Act (24 and 25 Vic., C. 104), section 15—Letters Patent, High Court, 1865, clause 28.

The High Court has powers of revision in respect of an order of discharge passed by a Presidency Magistrate by reason not of section 28 of the Letters Patent, 1865, but of section 15 of the Charter Act (24 and 25 Vic., C. 104). That section has always been interpreted in

a very extended meaning so as to give ample powers of superintendence, that is to say, powers of revision over proceedings of subordinate Courts. But the High Court has no power under the Code of Criminal Procedure to interfere in revision with an order of dismissal or discharge passed by a Presidency Magistrate. *Colville vs. Kristo Kishore Bose, I. L. R., 26 Cal., 746*, dissented from; *Opoorba Kumar Sett vs. Probod Kumary Dass, I. C. W. N., 49*, referred to. A Presidency Magistrate, acting under section 203 of the Criminal Procedure Code, dismissed a complaint on the report of the police without examining the complainant and without finding on such examination that there was no sufficient ground for proceeding. The High Court, acting under section 15 of the Charter Act, ordered a further inquiry to be made into the matter of the complaint.

[27 Cal. page 131.]

(A.) AVERAM DAS MOCHI vs.
ABDUL RAHIM.

Workman's Breach of Contract Act (XIII of 1859)—Breach of contract by workman—Trial—Procedure—Criminal Procedure Code (V of 1898), section 370.

In the trial of a case under the Workman's Breach of Contract Act (XIII of 1859), the Magistrate is not bound to frame his record in accordance with the provisions of section 370 of the Criminal Procedure Code. It is doubtful whether a proceeding under the first clause of section 2 and under section 3 of Act XIII of 1859 is a criminal proceeding. There is no offence committed, and there is no accused. The provisions of section 370 of the Criminal Procedure Code are, therefore, inapplicable to a case of this nature.

[27 Cal page 133.]

(B.) QUEEN-EMPRESS vs.
MUKIMUDDIN.

Reformatory Schools Act (VIII of 1897), sections 8, 11, 16 and 31—Rule framed by the Local Government—Youthful offender—Evidence of age—Order not properly passed—Penal Code (Act XLV of 1860), section 83.

If an order for detention in a Reformatory School in substitution for transportation or

imprisonment be not properly passed, a Court is not debarred by section 16 of the Reformatory Schools Act (VIII of 1897) from altering or reversing such order. A boy of about 9 years of age was found in the grounds of the residence of the Commissioner of Patna at 3 A.M. in the morning with a brass *lota* in his hand. He was tried summarily and, without any preliminary inquiry as to the age of the boy being made, was sentenced to three months' rigorous imprisonment, or in lieu thereof to be detained in a Reformatory School for seven years.

Held, the accused did not come within the definition of "youthful offenders" as given in the rules framed by the Local Government under section 8 of the Reformatory Schools Act, and the offence of the accused being his first offence the case should have been dealt with under section 31 of the Act. It is not that a Magistrate is under no circumstances competent to find from the appearance of a person convicted by him that he is a youthful offender, but it is generally desirable that there should be some reliable evidence on the point, and especially when it is necessary to determine the period of detention. The age of the accused being under twelve years the Magistrate should, considering the provisions of section 83 of the Penal Code, have found that the accused had attained sufficient maturity of understanding to judge of the nature and consequences of his act.

[27 Cal. page 137.]

(C.) QUEEN-EMPRESS vs. NATU.

Pardon—Criminal Procedure Code (V of 1898), section 337 and section 339—Tender of pardon—Trial of person who having accepted a pardon has not fulfilled the conditions on which it was offered—Prosecution for giving false evidence—Sanction of High Court.

When a pardon under section 337 of the Criminal Procedure Code has been tendered to and accepted by any person in connection with an offence he should not be tried for any alleged breach of the conditions of his pardon or for any offence connected with that for which he has received pardon until the trial of the principal offence has been completed. No prosecution for the offence of giving false evidence in respect of a statement made by a person who has accepted a tender of pardon should be entertained without the sanction of the High Court, as provided by section 339, clause (3) of the Code.

[27 Cal. page 139.]

(A.) MANKURA PASI *vs.* QUEEN-EMPRESS.

Evidence in criminal case—Evidence of bad character—Belonging to a gang of persons associated for the purpose of habitually committing theft—Penal Code (Act XLV of 1860), section 401—Evidence Act (I of 1872), section 14 and section 54, as amended by Act III of 1891.

The character of the accused not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft, punishable under section 401 of the Indian Penal Code, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence. Where it was proved that certain persons were found together at some distance from their houses, that they were all intimately connected with one another, and were in the habit of visiting *melas* together, that one of them was arrested in the act of picking a pocket, and that when they were arrested many of them gave false names and false addresses;

Held, they could not be convicted under section 401 of the Indian Penal Code, there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft.

[27 Cal. page 144.]

(B.) QUEEN-EMPRESS *vs.* DEODJIAR SINGH.

Penal Code, section 218—"Charged," Meaning of, in that section—Criminal Procedure Code (Act V of 1898), section 4, clause (f)—Cognizable offence—Offence under Gambling Act (Bengal Act II of 1897)—Accomplice—Witness present on the occasion of the giving of a bribe—Penal Code, sections 114 and 161—Illegal gratification—Abetment of offence of giving bribes.

The District Superintendent of Police gave a warrant under the Gambling Act (Bengal Act II of 1897) to D, a Sub-Inspector, to arrest persons found gambling in a certain house. In order to save two persons from legal punishment for having committed an offence under the Gambling Act in that house, D framed a first information and a special diary incorrectly.

Held, he was properly charged with, and found guilty of, having committed an offence

under section 213 of the Penal Code. The word "charged" in that section is not restricted to the narrow meaning of "enjoined by a special provision of law." An offence under the Gambling Act, being an offence for which the District Superintendent of Police may arrest or by warrant direct an arrest, is a cognizable offence within the meaning of section 4, clause (f) of the Criminal Procedure Code. The words "a Police officer" in that clause do not mean "any and every Police officer"; it is sufficient if the Legislature by any law limits the power of arrest to any particular class of Police officers. D and F, a Head constable, were also charged under section 161, and section 161 read with section 114, of the Penal Code, respectively, and it was contended that these charges were not sustainable, because they rested entirely on the testimony of persons alleged to have been accomplices, who had not been corroborated in material particulars.

Held, the mere presence of a person on the occasion of the giving of a bribe, and his omission to promptly inform the authorities, do not constitute him an accomplice, unless it can be shown that he somehow co-operated in the payment of the bribe, or was instrumental in the negotiations for the payment. *Queen vs. Chundo Chundalinee*, 24 W. R. Cr., 55; *Queen-Emress vs. Maganlal*, I. L. R., 14 Bom., 115; *Queen-Emress vs. Chagan Dayaram*, I. L. R., 14 Bom., 331; *Queen-Emress vs. O'Hara*, I. L. R., 17 Cal., 642; *Ishan Chundra vs. Queen-Emress*, 21 Cal., 323; *Jogendra Nath Bhaumik vs. Sangat Garo*, 2 C. W. N., 55; *Rajani Kanto Bose vs. Asan Mullick*, 2 C. W. N., 672, and *Alimuddin vs. Queen-Emress*, I. L. R., 23 Cal., 361, distinguished.

[27 Cal. page 172.]

(C.) SATIS CHANDRA DAS BOSE *vs.* QUEEN-EMPRESS.

Sessions Judge, Jurisdiction of—Criminal Procedure Code (V of 1898), section 423, clause (b)—Power of Appellate Court to order a re-trial.

A conviction and sentence under section 211 of the Penal Code by a Magistrate having jurisdiction to try the case, was on appeal set aside, and a new trial under the same section was directed by the Sessions Judge. It was contended that the power to order a new trial under section 423, clause (b), of the Criminal Procedure Code, could only be exercised when the conviction and sentence was set aside for want of jurisdiction in the trying Magistrate.

Held, that there is nothing in section 423, clause (b) of the Code, to limit the power of an Appellate Court to order a re-trial.

Queen-Empress vs. Maula Buksh, I. L. R. 15 All. 205; and Queen-Empress vs. Jabanulla, I. L. R. 23 Cal. 975, followed Queen-Empress vs. Sukta, I. L. R. 8 All. 14, disapproved of.

[27 Cal page 174.]

(A.) ISHAN CHANDRA KALLA vs.
DINA NATH BADHAK.

Criminal Procedure Code (Act V of 1898), section 522—Restoration of possession of property—Use of Criminal force—Penal Code (Act XLV of 1860), section 350.

In order to support an order under section 522 of the Criminal Procedure Code (V of 1898), there must be a finding that the dis-possession was by the use of criminal force as defined in section 350 of the Penal Code. Ram Chandra Bora vs. Jityandria, I. L. R. 23 Cal., 434, approved of.

[27 Cal. page 175.]

(B.) RAKHAL RAJA vs. KHERODE
PERSHAD DUTT.

Sentence—Enhancement of sentence—Criminal Procedure Code (V of 1898), section 423—Alteration of sentence on appeal—Effect of alteration.

A sentence of three months' imprisonment was on appeal altered by the Sessions Judge to one month's imprisonment with a fine of Rs. 20 or in default of payment to 15 days' rigorous imprisonment. This alteration of sentence was held not to amount to an enhancement of the sentence such as was contrary to the terms of section 423 of the Criminal Procedure Code. No general rule can be laid down to determine what is or is not an enhancement of sentence when only a portion of a sentence is altered to a punishment of a lesser degree of severity. In each case the Court has to consider what is the effect of the alteration. Queen-Empress vs. Chagan Jagannath, I. L. R. 23 Bom., 439, dissented from.

(C.) [27 Cal. page 239.]

Criminal Procedure Code (V of 1898), section 145—Dispute regarding right to collect rents—Jurisdiction of Magistrate—Appointment of Receiver of a joint estate—Joint owners governed by Mitakshara Law.

There is no want of jurisdiction in a Magistrate to proceed under section 145 of the Criminal Procedure Code, because the dispute is one regarding the right to the collection of

rents between joint owners governed by the Mitakshara School of Hindu Law. Nor can the appointment of a receiver of the joint estate, subsequent to the passing of the order by the Magistrate, affect the question of the jurisdiction of the Magistrate at the time when he passed the order.

[27 Cal. page 262.]

(D.) WOOLFUN BIHI vs. JESARAT
SHIRIKH.

Defamation—Statements made by persons in the course of their evidence as witnesses in Court of Justice—Relevancy of statements to issue in case—Penal Code (Act XLV of 1860), section 500.

Where certain statements alleged to be defamatory were made by certain persons in the course of their evidence as witnesses in a Court of Justice and were relevant to the issue in the case under enquiry:

Held, that such persons could not be prosecuted for defamation in respect of those statements.

[27 Cal. page 293.]

(E.) QUEEN-EMPRESS vs. JADUB
DAS.

Evidence—Evidence in criminal case—Criminal Procedure Code (Act V of 1898), sections 161, 164, 268 and 307—Impropriety of taking down statements of persons immediately before their arrest—Impropriety of recording statements of witnesses with a view to fix them to the statement—Confession retracted—Evidence of witnesses retracted—Corroboration—Deposition before committing Magistrate read under section 288, Criminal Procedure Code—Trial by jury—Duty of Judge—Reference to High Court.

Where there is evidence in the hands of a Police officer upon which he is bound to arrest a person, it is improper for him to obtain a statement from that person professedly under section 161 of the Criminal Procedure Code and reduce it to writing, and by virtue of section 25 of the Evidence Act, such statement is inadmissible in evidence.

It is also improper for a Police officer to send a person practically under custody, who is in the position of a witness, to have his statement recorded by a Magistrate, under section 164 of the Criminal Procedure Code, with the view of fixing him to that statement at the time when judicial proceedings are subsequently taken. The voluntary character of such a statement cannot but be doubted, and when

retracted in the Court of Sessions, the Judge should not bring the statement on to the record under section 288 of the Criminal Procedure Code without making proper inquiry.

It is not safe to convict an accused person on his retracted confession standing by itself uncorroborated, or on the statements of witnesses brought in under section 288 of the Criminal Procedure Code without independent corroborating testimony; nor can these two be joined together and held as mutually corroborating each other so as to justify a conviction based on them. *Queen vs. Amanulla*, 12 B. L. R. at 15; 21 U. R. Cr. 49, *Queen-Empress vs. Ranj*, L. R., 10 Mad., 295, and *Queen-Empress vs. Bharnappa*, 12 Mad., 123, referred to and approved of.

In making a reference under section 307 of the Code of Criminal Procedure, the Sessions Judge is limited to the evidence at the trial which was before the jury.

[27 Cal. page 317.]

(A.) THE GOVERNMENT OF BENGAL
vs. SENAYAT ALI.

Bengal Municipal Act (Bengal Act III of 1884), sections 155, 156—Ferry, Meaning of—Boat plying for hire without license within prescribed limits of ferry—Right of ferryman to demand tolls.

The expression "a ferry" in the Bengal Municipal Act means the exclusive right to carry passengers across the stream from one bank to the other on payment of certain prescribed tolls. The object of section 155 of that Act appears to be to prevent the crossing of passengers from one bank of the river to the opposite bank by a boat plying for hire without a license within the prescribed limits. *Sem-bite*, therefore, that the mere crossing of the bank of a *khal* leading into the limits of a Municipal ferry would not constitute a breach of the Act. A ferryman has no authority to demand tolls from persons who are merely passengers in an unlicensed boat. The remedy against the person who keeps a ferry-boat without a license plying within the prescribed limits is provided by section 156 of that Act.

(B.) [27 Cal. page 320.]

Arrest—Arrest by Police on an order in writing—Whether Police obliged to show authority under which they act to person arrested—Resistance to such arrest—Escape from custody—Code of Criminal Procedure (Act V of 1898), sections 56 and 80—Penal Code (Act XLV of 1860), section 224.

There is nothing extending section 80 of the Code of Criminal Procedure to an arrest made by the police on an order in writing under

section 56 of that Code, so as to require that any information as to the authority under which the police are acting must be given to the person arrested in order to make it an arrest warranted by law. It may be desirable or even obligatory that if called upon the police officer making such an arrest should show the person arrested the authority under which he is acting, but to hold that he is bound to do so before he can properly arrest and detain in custody such a person, so as to make the arrest and the detention lawful, would be to extend the law beyond what the Legislature has thought proper to declare it

[27 Cal. page 324.]

(C.) QUEEN-EMPRESS vs. KHET-
TER MOHUN CHOWDHRY.

Stamp Act (I of 1870), sections 58, 61 and 64—"Signing otherwise than as a witness, etc.," Meaning of—Liability of agent authorised to sign on behalf of principal—Granting of unstamped receipt—Refusal to grant stamped receipt by firm—Liability of members of such firm—"Person," Meaning of—Proof of demand of receipt.

The expression "signing otherwise than as a witness, etc.," as used in section 61 of the Stamp Act, means the writing of a person's name by himself or by his authority, with the intent of authenticating a document as being that of the person whose name is so written. An ordinary agent authorized to sign on behalf of his principal would fall within this description, and consequently within the purview of the section. Where, therefore, a person signed a firm's name to certain letters under the authority of the firm, the circumstance that the body of the letters were written at the dictation of the manager of the firm was held not to be sufficient to distinguish his case from that of any other agent. The term "person" in sections 61 and 64 of the Stamp Act, includes the members of a trading partnership. So where certain persons, members of a firm carrying on business in Calcutta as general dealers (which firm had acknowledged the receipt of certain sums of money from one L and had refused to grant him a stamped receipt), were charged under section 61 of the Stamp Act with having granted an unstamped receipt, and under section 64 of that Act with having refused to grant a duly stamped receipt, it was held that their liability depended on whether they were in contemplation of law the persons who signed the letters of acknowledgment or refusal to give the receipt, and not on whether they were present at the writing of the letters, or knew of the writing of them, provided that it was established by evidence that a requisition for a receipt had been made under section 58 of that Act.

[27 Cal. page 366.]

(A.) KALAI vs. KALU CHAUKIDAR.

Arrest—Village-chaukidar, whether a police officer—Person unlawfully arrested by a private person and made over to village-chaukidar—Rescue from custody of village-chaukidar—Lawful custody—Penal Code (Act XLV of 1860), section 225—Criminal Procedure Code (Act V 1898), section 59—Village-chaukidari Amendment Act, 1870 (Bengal Act I of 1892), section 13.

S. who was alleged to have committed theft, was unlawfully arrested by a private person and made over to the custody of the village-chaukidar. The theft was not committed in view of such private person. S was rescued from the custody of the village-chaukidar by the accused. The accused were convicted under section 225 of the Penal Code and sentenced each to two months' rigorous imprisonment.

Held, that a village-chaukidar cannot be properly regarded as a police officer within the terms of section 59 of the Code of Criminal Procedure, and that S. therefore, was not in lawful custody at the time of his rescue. Conviction and sentence set aside.

[27 Cal. page 368.]

(B.) QUEEN-EMPRESS vs. SOMIR BOWRA.

Sessions Court—Accused person, unable to understand proceedings in Court—Commitment of—Report by Magistrate of such proceedings to High Court—Power of High Court to pass final orders on such report—Discretion of High Court to order Sessions trial to be held—Code of Criminal Procedure (Act V of 1898), sections 341 and 471—Penal Code (XLV of 1860), section 302.

An accused person who had been for some time confined in a lunatic asylum was tried and committed to the Sessions by a Deputy Magistrate on a charge of murder. The accused was deaf and dumb, and could not be made to understand the proceedings which had been taken. On the proceedings being forwarded to the High Court under section 341 of the Code of Criminal Procedure, it was held that the law does not contemplate that the Sessions trial should necessarily take place. That it is discretionary with the High Court on a commitment made to order the

Sessions trial to be held and the High Court must consider whether any benefit would be likely to result especially to the accused by such trial. The High Court, in this case having come to the conclusion that no benefit would be likely to result to the accused by his being tried by the Court of Sessions, found that the accused was guilty of the alleged murder, but that he was by reason of unsoundness of mind not responsible for his action, and directed him to be kept in the District Jail to await the orders of Government.

[27 Cal. page 370.]

(C.) ZAMUNIA vs. RAM TAHAL.

Witness—Cross-examination of witness—Cross-examination of prosecution witnesses before charge—Right of accused to have prosecution witnesses recalled after charge drawn up for purpose of cross-examination—Discretion of Magistrate—Criminal Procedure Code (Act V of 1898), sections 254, 256 and 257—Penal Code (Act XLV of 1860), section 342.

After a charge has been drawn up, the accused is entitled to have the witnesses for the prosecution recalled for the purposes of cross-examination, section 256 of the Code of Criminal Procedure gives the Magistrate no discretion in the matter. After charge has been drawn up, it is the duty of the Magistrate to require the accused to state whether he wishes to cross-examine, and, if so, which of the witnesses for the prosecution whose evidence has been taken. The fact that there has been already some cross-examination before the charge has been drawn up, does not affect this privilege. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application, on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice.

[27 Cal. page 372.]

(D.) QUEEN-EMPRESS vs. ISAHAK.

Appeal in criminal case—Taking of additional evidence by Appellate Court—Dismissal of appeal—Accused's right of appeal from such dismissal—Code of Criminal Procedure (Act V of 1893), section 428.

Where an Appellate Court has, under section 428 of the Code of Criminal Procedure, taken additional evidence, the accused whose appeal has been dismissed by such Court has no right of appeal to the High Court.

[27 Cal. page 450.]

(A.) AINUDDI SHEIKH *vs.* QUEEN-EMPRESS.

Forest Act—Conviction for offence under—
Subsequent order for confiscation of boats
—Confiscation a punishment—When such
order should be made—Indian Forest Act
(VII of 1878), sections 25 and 54.

Certain accused persons were tried summarily and convicted under section 25 of the Indian Forest Act, and sentenced to pay fines. By a subsequent order under section 54 of the same Act, their boats were confiscated.

Held, that, under the terms of section 54, an order of confiscation cannot be regarded as an order incidental on the conviction. The confiscation is by the terms of that section declared to be a punishment, for it is in addition to any other punishment prescribed for the offence. That, being a punishment, the order should have been passed simultaneously with the other punishment for the offence of which the accused have been convicted. *Empress vs. Nathu Khan*, I. L. R., 4 All., 417, referred to.

[27 Cal. page 452.]

(B.) RAMASORY LALL *vs.* QUEEN-EMPRESS.

Sanction—Information by accused of offence—Report by a police of falsity of information—Sanction by District Magistrate on police report—Judicial proceeding—Subordination of police officer to District Magistrate - Complaint - Criminal Procedure Code (Act V of 1898), sections 195 and 480—Penal Code (Act XLV of 1860), section 182

The accused gave certain information to the police, who after investigating the matter reported that the information given was false and constituted an offence under section 182 of the Penal Code. The District Magistrate on this sanctioned the prosecution of the accused, who was convicted, and sentenced under that section. The accused appealed against the conviction and sentence. His appeal was heard and dismissed by the District Magistrate, who had previously sanctioned his prosecution. On revision the accused contended that the District Magistrate having sanctioned his prosecution on the police report was not competent to hear the appeal.

Held, that section 487 of the Code of Criminal Procedure did not apply as the offence was not committed before the District Magistrate, nor was it in contempt of his authority, nor brought to his notice in the course of judicial proceeding.

Held, further, that although police officers in a district were generally subordinate to the District Magistrate, the subordination contemplated by section 195 of the Code of Criminal Procedure was not such subordina-

tion. That subordination contemplated some superior officer of police. Nor could the report of the police officer be regarded as a complaint under section 195 of the Code of Criminal Procedure, and therefore no proper sanction had been obtained. The defect, however, was cured by section 537 of the Code of Criminal Procedure, as no failure of justice had been occasioned.

[27 Cal. page 455.]

(C.) HARI CHARAN SINGH *vs.* QUEEN EMPRESS.

Evidence—False evidence—Examination on oath of person by Magistrate for purpose of obtaining information in order to take proceedings—Whether such person a witness—Contradictory statement made by such person at trial as witness—Code of Criminal Procedure (Act V of 1898), section 190, clause (c)—Indian Oaths Act (X of 1878), section 5—Penal Code (Act XLV of 1860), sections 191 and 193

Held, that where an accused person was examined by a Magistrate for the sake of obtaining information on which proceedings could be taken, the Magistrate, although he might examine him to obtain information, could not legally examine him on oath, nor could the accused be said at that stage of the proceedings to be a witness even though he were examined on oath. There was no authority that being so examined, the accused was bound by any express provision of law to state the truth. Consequently any charge for giving false evidence founded on this statement was bad, and it therefore followed that a conviction and sentence founded on this statement as being contrary to another statement made by the accused when examined as a witness at the trial, without any proof of finding that the second statement was false, could not be maintained.

[27 Cal. page 457.]

(D.) DURGA CHARAN JEMADAR *vs.* QUEEN-EMPRESS.

Arrest—Warrant of arrest directed to police officer—Endorsement of warrant by another police officer to process-serving peons—Legality of such endorsement—Persons not police officers—Arrest by peons—Rescue of persons arrested—Whether lawful arrest—Code of Criminal Procedure (Act V of 1898), sections 68 and 79

A warrant of arrest was endorsed over to a Court Sub-Inspector for execution. The

Court Sub-Inspector being away, the Court Head-Constable by an order in writing signed by himself endorsed this warrant over to two process-serving peons for execution. The peons arrested a number of men under the warrant, some of whom were forcibly rescued by the accused and other persons. The accused were convicted under various sections of the Penal Code of rescuing the persons arrested and obstructing the execution of the warrant of arrest.

Held, that the endorsement of the warrant by the Court Head-Constable to the peons did not make them competent to execute the warrant, that even if the peons had been legally appointed, they could not have made the arrest, inasmuch as they were not police officers within the terms of section 79 of the Code of Criminal Procedure. The terms of section 79 are express in this respect, and no other persons except a police officer is competent to execute a warrant of arrest under an endorsement from another police officer.

[27 Cal. page 461.]

(A.) NATABAR GHOSE vs.
PROVASH CHANDRA CHATTERJEE.

Presidency Magistrate, Judgment of—
Sentence of imprisonment—Reasons for conviction to be recorded—Code of Criminal Procedure (Act V of 1898), section 370, clause (i)—Penal Code (Act XLV of 1860), section 408.

Section 370 of the Code of Criminal Procedure requires that in a case in which the accused is sentenced to imprisonment, a Presidency Magistrate shall record a brief statement of the reasons for the conviction. It is not sufficient for him to record that the offence is proved, for that may necessarily be implied to be his opinion from the fact that he has convicted the accused. The law contemplates something further as the reason for the conviction.

[27 Cal. page 501.]

(B.) PANDITA *alias* RAHMAT-
ULLA PRAMANIK vs. RAHIM-
ULLA AKUNDO.

Summary Trial—Dispute as to possession of land—Bona fide belief as to title—Cutting and carrying away crops sown by another—Facts constituting theft—Dishonest intention—Penal Code (Act XLV of 1860), sections 24 and 379—Code of Criminal Procedure (Act V of 1898), sections 429 and 439.

An accused person alleged and claimed that certain paddy was grown upon his *note*, and

that he cut and removed it as a matter of right and in an assertion of a *bona fide* claim to the land, it was admitted by the complainant who also claimed the paddy and the land, that there had been a boundary dispute between his landlord and the landlord of the accused. The accused was convicted in a summary trial of the paddy.

Held per PRINSEP, J.—That, if the complainant's *bargadars* had grown the crops as found and nevertheless the accused cut and carried them off, there could be no *bona fide* belief that he was entitled to do so to justify his action in regard to the complainant. With the fact found that possession was with the complainant by the growing by him of the crops cut by the accused, the accused was without justification in thus taking the law into his hands, even if he was entitled to hold the lands, because he was not in actual possession of them. His Lordship refused to interfere.

Per STEVENS, J.—The findings of the lower Court taken as a whole amounted to a finding that the accused acted *malà fides*, and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him, could not be taken as showing that a *bona fide* dispute as to title existed between the complainant and himself. To constitute theft if property is removed against his wish, from the custody of a person who has an apparent title or even a color of right to such property. In the present case the complainant had an apparent title as tenant of the land, together with long possession, and he had, on the strength of that apparent title and long possession, raised the crops which the accused removed. The application should be dismissed. *Queen-Empress vs. Gangaram Santram* (I. L. R., 9 Bom., 135) referred to. *Per* STANLEY, J., *contra*:—That the evidence as well for the prosecution as for the defence conclusively established that there was a *bona fide* dispute as to the title to the land upon which the paddy was sown. Once this was shown the criminal charge failed. The fact, if it be the fact, that the paddy was sown by the complainant, would not give him the property in the crop, if it were sown on the land of the accused. If the land was the land of the accused it was an act of trespass on the part of the complainant to sow it with paddy, and the complainant had no right to complain if the accused resented his act of aggression by cutting and removing the crop. A dishonest intent is a necessary ingredient in the offence of theft. No such intention has been found on the part of the accused. That the conviction and sentence should be set aside.

[27 Cal. page 565.]

(C.) RAM KRISHNA BISWAS vs.
MOHENDRA NATH MOZUMDAR.

Fine—Daily payment of fine, Order of—
Illegality of such order.

An order for payment of a daily fine is illegal, inasmuch as it is an adjudication in

respect of an offence which has not been committed when such order is passed Sagar Dutt (1 B. L. R. O., Cr., 41); W. N. Love (18 W. R. C., 44); Kristodhone Dutt *vs.* Chairman of the Municipal Commissioners of the Suburbs of Calcutta (25 W. R. Cr., 6) referred to.

[27 Cal. page 566.]

(A.) ABHI MISSER *vs.* LACHMI NARAIN.

Rioting, Acquittal of—Conviction of grievous hurt—Constructive guilt—Abetment—Penal Code (Act XLV of 1860), sections 114, 525, with 149

Where the accused persons have been acquitted of rioting, they cannot be properly convicted of grievous hurt under section 325 by the application of section 149 of the Penal Code, where it has not been found that these persons or any of them were members of an unlawful assembly in prosecution of the common object, of which grievous hurt was caused by any other member of the same assembly, or that the offence was such as each member of the assembly knew to be likely to be committed in prosecution of that object. The mere presence as an abettor of any person would not, under the terms of section 144 of the Penal Code, render him liable for the offence committed. *Empress vs. Chattradhari Goala* (2 Cal., W. N., 49) explained. In order to bring a person within section 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that if absent, he would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed. *Queen vs. Musamat Niruni* (7 W. R., Cr., 49) relied on.

[27 Cal. page 567.]

(B.) QUEEN-EMPRESS *vs.* DEBENDRA KRISHNA MITTER.

Mortgage, Definition of, for purposes of stamp duty—Assignment by way of mortgage of valuable security to secure pre-existing debt—Stamp duty payable thereon—Stamp Act (1 of 1879), section 3, sub-section (13), section 61, schedule I, Art. 29, clause (b), and Art. 44.

Art. 29 of schedule I of the Stamp Act (1 of 1879) applies to an instrument evidencing an agreement to secure the payment of a

loan, executed at the time the loan is made and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. It contemplates an instrument contemporaneous with the advance and with the loan. For the purpose of ascertaining what stamp duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined in the Stamp Act.

[27 Cal. page 654.]

(C.) QUEEN-EMPRESS *vs.* SONAI MUGH.

Chittagong Hill Tracts, conviction of offences committed within appeal from—Jurisdiction of High Court to hear such appeal—Chittagong Act (XXII of 1860), section 1—Penal Code (Act XLV of 1860), sections 379 and 457.

There is no jurisdiction in the High Court to hear appeals in respect of the sentences passed on conviction of offences committed within the districts known as the Chittagong Hill Tracts.

[27 Cal. page 655.]

(D.) KHAN BAFUTI DEWAN *vs.* BISPATI PUNDIT.

Cow, Slaughter of Open verandah—Annoyance to residents of locality—Open place, Meaning of—Residents or passengers—General Police Act (V of 1861), section 34—Act for the Regulation of Police (VIII of 1895), section 13 being an Act to amend Act V of 1861.

The slaughtering of a cow in an open verandah, so as to cause annoyance to the residents of the locality, and in spite of their remonstrances is a breach of the law, being an act in an "open place" within the terms of section 34 of Act V of 1861 as amended by Act VIII of 1895. The words "open place" coupled with "road, street or thoroughfare" should not be interpreted *jusdem generis*. It seems rather that the addition of these words was intended to have a wider significance, and this is shown by another amendment in the same section, made at the same time in which the annoyance, etc., caused must be not to the residents and passengers, but to the residents or passengers. The intention of the Legislature was to extend the Act not only to passengers who would be on such a road, street, or thoroughfare, but to residents, who are not passengers.

[27 Cal. page 656.]

(A.) NAKHILAL JHA *vs.* QUEEN-
EMPRESS.

Security for good behaviour—Imprisonment in default of security—Reference to Sessions Judge—Accused—Notice—Right to be heard by pleader—Order of confirmation—Grounds for such order—Code of Criminal Procedure (Act V of 1898), sections 110, 123 and 340.

Where a reference is made to the Sessions Judge under section 123 of the Code of Criminal Procedure, he is bound to give notice to the person concerned, and also to hear his pleader, if he should be so represented. The term "accused" in section 340 of the Code of Criminal Procedure applies to a person, who is liable under section 123 of that Code to imprisonment in default of giving security. The Sessions Judge in confirming the order of a Magistrate under section 123 of the Code of Criminal Procedure in regard to the imprisonment of a person in consequence of his being unable to furnish the necessary security, is bound to find a special ground, on which the order is passed, having special reference to section 110 of that Code. It is not sufficient where he only finds in general terms that it is for the interests of the community at large that such person should be bound over to be of good behaviour.

[27 Cal. page 658.]

(B.) HAR KISHORE DASS *vs.* JUGUL
CHUNDER KABYARATHNA
BHUTTACHARJEE.

Accused, conviction of—Further inquiry—Offence not charged—Other persons not before Magistrate—Code of Criminal Procedure (Act V of 1898), sections 203, 204 and 487—Penal Code, sections 144 and 426.

On a complaint made to the Deputy Magistrate he convicted one of the accused, H, of mischief. On application made to the Sessions Judge, he directed a further inquiry to be made by the Magistrate into another offence under section 144 of the Penal Code, in respect of H, no charge of any such offence having been made at any time against him. The Sessions Judge also directed a further inquiry against other persons, who apparently were mentioned in the complaint, but who had not been summoned to appear before the Magistrate.

Held, that the order of the Sessions Judge was without jurisdiction, not being within the powers described by section 437 of the Code of Criminal Procedure.

[27 Cal. page 1]

(C.) JATU SING *vs.* MAHABIR
SINGH.

Theft, Charge of—Conviction—Appeal—Acquittal of theft—Conviction of offence of different character, Legality of—Code of Criminal Procedure (Act V of 1898), section 423—Penal Code (Act XLV of (1860), sections 143 and 379.

The accused were convicted of theft that was the only charge which they were called upon to answer. In appeal the District Magistrate held that no theft had been committed, but he convicted the accused of being members of an unlawful assembly.

Held, that on the trial the accused were called upon to answer only a charge of theft, they were never called upon to answer any other charge, and they therefore could not fairly be convicted on their appeal of an offence of an entirely different character. It is on the proceedings taken before the Magistrate that the facts constituting an offence for which a trial is held, are made known to the accused and the law is applied by the Magistrate to the fact established, so as to constitute the charge which the accused is called upon to answer. It therefore cannot be said that sufficient notice was given to the accused, because mention of section 147 of the Penal Code (rioting), together with theft, was made in the final report of the police as the offences considered to have been established; and that the accused must have been made acquainted with such report.

[27 Cal. page 662.]

(D.) QUEEN-EMPRESS *vs.* IMAN
MONDAL.

Proceedings for taking security for good behaviour—Discharge of person called upon—Further inquiry, Power to order, in such proceedings—Code of Criminal Procedure (Act V of 1898), sections 110 and 487.

A further inquiry cannot be made into the case of a person against whom proceedings under section 110 of the Code of Criminal Procedure have been taken, and who has been discharged.

If it be considered by the Magistrate that it is necessary to institute further proceedings, he is competent to do so under the law, on fresh information received. The further inquiry, which can be ordered under section 437 of the Code of Criminal Procedure is, into a complaint which has been dismissed or into the case of any accused person who has been discharged. Proceedings under section 110 of the Code of Cri-

iminal Procedure cannot be regarded as on a complaint, nor can they be regarded as a case in which any accused person has been discharged, for the terms "accused person" and "discharge" in section 437 of the Code of Criminal Procedure, clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Chapter XIX of the Code.

[27 Cal. page 692.]

(4.) AHMED HOSSEIN *vs.* THE QUEEN-EMPRESS.

Arms or Ammunition—Possession of or control over—Search, legality of—Sanction to prosecute—Code of Criminal Procedure (Act V of 1898), sections 55, 103 and 165—Arms Act (XI of 1878), sections 19, 20, 25, 29 and 30.

The license of the accused for the possession of fire-arms and ammunition was cancelled in August, 1897. He was suspected of being in possession of arms after the cancellation of his license. On the 23rd of April, 1899, the Assistant Magistrate of Purneah with a number of police went to the house of the accused to search for arms. They surrounded it, arrested the accused, and then searched his house. The police had no search-warrants, nor was there anything to show upon what charge the accused was arrested. Two gun stocks, some ammunition and implements for re-loading were discovered in the house. There was nothing to show that the sanction required by section 29 of the Arms Act was given before proceedings were instituted against the accused. Accused was convicted and sentenced under sections 19 and 20 of the Arms Act.

Held, that the conviction under section 20 was not sustainable, but that the accused must be taken to have had arms and ammunition as defined by the Arms Act within the meaning of sub-section (f) of section 19 of that Act and the conviction under that section must be confirmed.

Held, further, that with respect to the question of whether or not any previous sanction had been given under section 29 of the Arms Act, the Court was not unmindful of the suggestion that the charge in this case was in the first instance, in respect of an alleged offence under section 20, and not of one under section 19; but that sections 19 and 20 were so interwoven, that it was difficult to see how an offence could be committed under the first paragraph of section 20, unless an offence under one of the enumerated sub-sections in section 19 had also been committed. It was not suggested that the charge here was an offence under the second paragraph of section 20.

[27 Cal. page 776.]

(B.) ANOOKOOL CHUNDER NUNDY *vs.* QUEEN-EMPRESS.

Trade-Mark—User of and property in—Proof of—Importation and sale of articles with particular marks impressed upon them—Succession by one Bank to business of another—Merchandise Marks Act (IV of 1889), section 3—Penal Code (Act XLV of 1860), sections 485 and 486.

A mark to be a trade-mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mere fact that a Bank imported and sold gold bars with a particular mark impressed upon them, a mark which was not originally theirs, but belonged to a Bank that had ceased to exist, and where there was no proof of any transfer or assignment of the mark, or that the new Bank succeeded the other in the sense either that it was a continuation of that Bank under another name, or that it succeeded to the business or acquired the good-will of that Bank, was held not to be sufficient to establish that the mark was the trade-mark of the new Bank.

[27 Cal. page 781.]

(C.) HARI TELANG *vs.* QUEEN-EMPRESS.

Security for good behaviour from habitual offenders—Acts committed by persons in performance of duties as burkundazes in zemindari—Habitual association—Joint trial—Code of Criminal Procedure (Act V of 1898), sections 110, 112, 117, 118 and 537.

Certain *burkundazes* employed at a *kut-chery* of the Bijni Estate, who were alleged to have committed acts of extortion and other acts of oppression in the performance of their duties, were called upon to execute bonds for their good behaviour on the grounds:—(1) That they habitually commit extortion; (2) that they habitually commit or attempt to commit or abet the commission of offences involving a breach of the peace; (3) that they are dangerous persons so as to render their being at large without security hazardous to the community. They were tried jointly by the Magistrate under section 117 of the Code of Criminal Procedure, and each of them was ordered to execute a bond with sureties for his good behaviour for three years.

Held that even supposing the Magistrate was right in considering that there was habitual association between these persons in regard to the first and second grounds, the

certainly would be no such connection between them in regard to their characters so as to make them dangerous persons, and thus to render their being at large without security hazardous to the community, and that proceedings should have been separately taken against each of them. Section 110 of the Code of Criminal Procedure is not applicable where certain acts amounting to extortion are committed by certain persons in the performance of their duties as *burkundazes* in a *zemin-dari*, as it cannot be said that these persons are in the habit of committing extortion as individual members of the community, because if they were discharged by the *zemindar* or ceased to be in his employ, the acts would no longer be committed, it being no longer to their interests to do such acts in the interest of their employer, and they certainly would not be likely to commit them in their own private capacities. The object of enabling a Magistrate to take security for good behaviour is for the prevention and not for the punishment of offences.

[27 Cal. page 785.]

(A.) JOYANTI KUMAR MOOKER-
JEE vs. J. B. MIDDLETON.

Criminal Procedure Code, section 144—
Dispute in respect of colliery—Order under section 144—Prohibition to both parties from exercising right of possession—Proceedings under section 145 of the Code of Criminal Procedure—Date of possession—Code of Criminal Procedure (Act V of 1898), sections 144, 145, 146.

On the 10th of November, 1899, the Magistrate passed an *ex parte* order under section 144 of the Code of Criminal Procedure by which both parties to a dispute were prohibited from exercising any right of possession in respect of a colliery. Subsequently proceedings under section 145 of the Code were instituted in respect of the same colliery and between the same parties. On the 29th of January, 1900, the Magistrate, having found that the second party had been in possession on the 10th of November, 1899, passed an order declaring them to be in possession.

Held, that the proper way of dealing with this case in interpreting the Magistrate's order was to hold that, whereas by reason of the operation of his order under section 144 of the Code of the 10th of November, 1899, no evidence could be offered to show the possession of either party from that date up to the 29th of December, he was consequently obliged to ascertain the possession immediately before this order and to regard his intervention as an attachment suspending the previous possession whatever it might be, but that, at the same time, the former possession continued, and although the lawful exercise of its rights had been forbidden for a time, the possession had never ceased to exist. That the order of the Magistrate was correct.

✓ [27 Cal page 798.]

(B.) JHUMUCK JHA vs. PATHUK
MANPAL.

District Magistrate—Power of, to pass orders in cases before subordinate Court without transfer to his own Court—Judicial enquiry before issue of process, legality of—Code of Criminal Procedure, sections 192, 202, 203 and 204

Held, where the complaints were not made to the District Magistrate, nor had the cases based on those complaints been withdrawn to his Court by any order, but were in the Court of a Joint Magistrate, who had examined the complainants, that the District Magistrate was not justified in interposing in the trial of the cases and had no authority under the law to pass any order in those cases. That even if the cases had been removed by the District Magistrate to his own Court for trial, it was very questionable whether the District Magistrate could pass orders directing a judicial inquiry by another Magistrate before the issue of process so as to postpone the trial.

[27 Cal. page 820]

(C.) DURGA DASS RUKHIT vs.
QUEEN-EMPRESS.

Sanction, application necessary for—Court—Collection under Land Acquisition Act whether—Power of such Collector to administer oath or require verification—Deputy Collector under Land Acquisition Act—Judicial Officer—Revenue Court—Over-estimate of value of land—False statement—False evidence—Forgery—Revision—Rule, hearing of—Discretion of High Court to decide matters for which rule prayed for, but not granted—Criminal Procedure Code (Act V of 1898), sections 190, 195, 439, 476 and 526—Penal Code (Act XLV of 1860), sections 193, 196, 199, 467, 468 and 471—Land Acquisition Act 1 of 1894, Part VIII, section 53.

Sanction under section 195 of the Code of Criminal Procedure should be given only on application made for it by some person, who may desire to complain of the particular offence and whose complaint could not be entertained without such sanction. In the matter of Banarsi Das, I. L. R., 18 All., 213, and Baperrain Surma vs Gouri Nath Dutt, I. L. R., 20 Cal., 471, referred to. The expression "the Court" in the Land Acquisition Act does not include a Collector, nor is there any authority given to the Collector to administer an oath or to require a verification. It is a false statement made under a verifica-

tion that constitutes an offence under section 193 of the Penal Code, not a verification oath or solemn affirmation. The Deputy Collector acting under the Land Acquisition Act is not a Judicial Officer, he cannot properly be regarded as a Revenue Court within the terms of section 476 of the Code of Criminal Procedure, his proceedings under the former Act are not regulated by the Code of Civil Procedure, nor is he right in requiring a petition put in before him to be verified in accordance with that Code, so as to make any false statement punishable as perjury. The Deputy Collector is not in a position to pass any final order in the matter of value of the land or the right to claim the price fixed; a party dissatisfied can claim a reference to the Civil Court whose duty it is to settle the matter in dispute judicially; therefore, to subject parties, who claimed the right to such a reference, to a criminal prosecution, when the matters on which the Deputy Collector had formed an opinion as a Revenue Officer under the Land Acquisition Act must be submitted to the determination of a Court, is obviously premature and improper, and is almost certain to operate very prejudicially towards them in the trial before the Civil Court of the same matter. In proceeding under the Land Acquisition Act what may be found to be an exaggeration or over-estimate of the value of land cannot properly constitute a false statement, which would demand a prosecution for perjury, and the fact that some years before the land was offered for sale at a much lower price is no sufficient ground for imputing such an offence. Discretion of the High Court in revision at the hearing of a rule to consider and decide matters in respect to which a rule had been prayed for, but not granted

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[27 Cal. page 892.]

(A.) LALDHARI SINGH vs. SUK DEO NARAIN SINGH.

Land, Ownership of, Dispute as to—
Collection of rents—Zemindars and tenants vs: rival zemindars and tenants—Necessary parties to proceedings under section 145 of the Code of Criminal Procedure—Parties concerned, Meaning of—Omission to add necessary parties—Addition of parties during proceedings—Revision and alteration of character of such proceedings by succeeding Magistrate—Jurisdiction of Magistrate—Revision, Power of High Court to interfere—Code of Criminal Procedure, sections 145, 429—Charter Act (24 and 25 Vic., chap. 104, clause 15).

The words in section 145 of the Code of Criminal Procedure, "parties concerned" in

dispute do not necessarily mean only the parties who are disputing, but include also persons who are interested in or claiming a right to the property in dispute. It is the duty of the Magistrate, on the materials before him to ascertain so far as he can, who are the persons interested in or claiming a right to the property in dispute and to give notice to them all, so that the whole matter, so far as his Court is concerned, may be disposed of in one proceeding. *Ram Chandra Das vs. Monohur Roy*, I. L. R., 26 Cal. 188, and *Protap Narain Singh vs. Rajendra Narain Singh*, I. L. R., 21 Cal. 29, followed. Where there was a dispute as to the ownership of lands between certain zemindars and their tenants on the one side, and other zemindars and their tenants on the other, and the real matter for determination was not merely which of the two parties of zemindars were entitled to collect the rents of the land, but also which set of rival tenants was entitled to hold actual possession of the lands, and in a proceeding under section 145 of the Code of Criminal Procedure, the zemindars only were made parties and not the tenants.

Held (AMER ALI and STANLEY, J.J.), that the tenants were necessary parties to the proceeding and the omission to make them parties went to the root of the case and was an illegality affecting jurisdiction which would justify the High Court in setting aside the order. PRINSKP, J.—The omission to join the tenants could not vitiate an order as between the zemindars on an objection that it was without jurisdiction, and that no question of jurisdiction arose in the matter. The High Court's powers are under the Charter Act, and these could be exercised only in respect of jurisdiction, where a Magistrate recorded proceedings under section 145 of the Code of Criminal Procedure and his successor on the same materials revised those proceedings altering their entire character, converting the dispute, which was originally stated to be a dispute regarding the actual possession of the land, into a dispute regarding the collection of rent between the persons named therein.

Held (AMER ALI and STANLEY, J.J.), that it was an abuse of jurisdiction on the part of the Magistrate so to alter the proceedings, and an abuse which would justify the intervention of the High Court under the powers conferred by the Charter. AMER ALI, J.—The High Court has the power to interfere both under its revisional jurisdiction, as also under clause 15 of the Charter. *Hurbullubh Narain Singh vs. Lechmeswar Prosad Singh*, I. L. R., 24 Cal. 55, referred to.

[17 Cal. page 918]

(A.) DAIMULLA TALUKDAR vs.
MAHARULLA TALUKDAR.

Jurisdiction—Dispute regarding right to property—Power of Magistrate to determine right and shares of parties—Civil Court—Code of Criminal Procedure (Act V of 1898), sections 144 and 145.

It is not because private parties or members of the same family dispute regarding their respective rights to land or crops, that a Magistrate is called upon to interfere. A Magistrate cannot take upon himself to decide questions of fact and Mahomedan law, so as to satisfy himself as to what are the actual rights of the parties to the lands in dispute. If he has good reasons to believe that such a dispute is likely to cause a breach of the peace, the law enables him to ascertain and maintain actual possession, or, if it is shown that the members of the family are inclined to break the peace, he can bind them all over to keep the peace. Where there was a dispute between the parties, who were related to one another as to the amount of their shares to certain property which was claimed on the one hand to be joint in certain shares, and on the other hand to exclusively belong to the other party, and no proceedings had been taken under section 145 of the Code of Criminal Procedure, nor was there anything to show that there was any probability of a breach of the peace. The Magistrate passed the following order: "The applicants must not plough more than 12 annas of the land."

Held, that such an order could not properly fall within section 144 of the Code of Criminal Procedure, as an order under that section could only be passed on some emergency and would have effect for only two months. The present order in its operation would have effect and was intended to have effect, until the parties went to a Civil Court to settle their disputes, and no emergency was ever suggested. That the order, therefore, was entirely without any authority of law and must be set aside.

✓ [27 Cal. page 921.]

(B.) MAHADEO SINGH vs. QUEEN-
EMPRESS.

False charge, Prosecution for making—Necessity of examination of complainant—Dismissal of complaint—Order for judicial inquiry or report without examining complainant, legality of—Penal Code (Act XLV of 1860), section 211, Code of Criminal Procedure (Act V of 1898), sections 202, 203 and 476

Where a Magistrate after having examined

the complainant and without hearing his witnesses or dismissing the complaint ordered the complainant to be prosecuted under section 211 of the Penal Code.

Held, that the Magistrate's order was without jurisdiction. Where a complainant, whose complaint had been reported false by the police, complained to the Magistrate and asked him to try the complaint, and the Magistrate did not examine the complainant himself, but made over the case to a Subordinate Magistrate for judicial inquiry or report.

Held, that the Magistrate had no authority for this procedure. A complainant must be examined by the Magistrate who receives the complaint or by some Magistrate to whom he has transferred the case. When a complainant has been examined, he is entitled to have the person accused brought before the Magistrate, and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can properly be refused and an investigation held.

[27 Cal. page 925]

(C.) AKHOY KUMAR CHUCKER-
BUTTY vs. JAGAT CHUNDER
CHUCKER BUTTY.

Accomplice—Wrongful confinement—Extortion—Money lent in ordinary course of business to pay amount extorted—Lender—Penal Code (Act XLV of 1860), sections 218, 342 and 384.

The accused, a Sub-Inspector of Police, arrested one J. wrongfully confined him, and extorted from him Rupees 200 under a threat that he, the accused, would not release J. unless the money were paid. This money was paid on this account by P, a money-lender, who lent J the money for this purpose. Accused was convicted under sections 342 and 384 of the Penal Code. In appeal the Sessions Judge held that P was not an accomplice, and having considered his evidence accordingly, dismissed the appeal.

Held, that it was sufficiently shown that the money was not voluntarily given, that it was given by J. to obtain his release from police custody, in which he was detained on no reasonable or sufficient ground, and it was extorted, because the Sub-Inspector refused to release J. as he was bound to do, unless he were paid that money. That P paying such money under such circumstances could not be regarded as an accomplice of the Sub-Inspector in such misconduct.

[27 Cal. page 979.]

(A.) GOLAPDY SHEIKH vs. QUEEN-EMPRESS.

Magistrate, Jurisdiction of—Reference of case for trial of offence by Subordinate Court—Power of District Magistrate to issue warrants for arrest of other persons concerned in that offence.

Where cognizance was taken of an offence on a police report and the case was made over to a Subordinate Magistrate:

Held, that, so long as the case connected with that offence remained with the Subordinate Magistrate, no other Magistrate was competent to deal with it, and that applications for warrants against other persons concerned in that offence should be made to the Magistrate before whom the case was, and to no other Magistrate.

[27 Cal. page 981.]

(B.) MOHESH SOWAR vs. NARAIN BAG.

Possession, Order of Criminal Courts as to—Order instituting proceeding under section 145 of the Code of Criminal Procedure (Act V of 1898)—Contents of such order—Irregularity in order, making proceedings without jurisdiction.

Unless a Magistrate complies strictly with the terms of section 145 of the Code of Criminal Procedure by stating in his written order all the particulars necessary to enable him to act under that section, his proceedings are without jurisdiction. It is not sufficient that the Magistrate should have before him a police report and that he should have given orders thereon that a written order be drawn up within the terms of section 145. It is his duty to draw up, or have drawn up, an order which in all respects satisfies the requirements of the law. It is absolutely necessary that the written order should be correct and complete in its terms.

[27 Cal. page 983.]

(C.) SHEO BHAJAN SINGH vs. MOSAWI.

Recognizance to keep peace—Conviction under section 143 of the Penal Code (Act XLV of 1860)—Code of Criminal Procedure (Act V of 1898), section 106.

An offence under section 143 of the Penal Code is not one of the offences specified in

section 106 of the Code of Criminal Procedure which would justify an order directing a person or persons to furnish security to keep the peace. There may be findings in the case which would justify such an order if such findings can be brought within the terms of section 106. *Jib Lal Gir vs. Jogmohun Gir*, I. L. R., 26 Cal., 576, referred to. Where the accused were convicted under section 143 of the Penal Code and ordered under section 106 of the Code of Criminal Procedure to furnish security to keep the peace, and it was alleged that the facts as proved showed that the accused came in a body, some of whom were armed with *lathis* and some of whom used threats and did other acts, showing an evident intention to commit breaches of the peace.

Held, that there should have been an express finding to that effect; that if the accused or any of them acted in such a manner, they should have been convicted of criminal intimidation or other offence which would enable the Magistrate to bind them over to keep the peace; and that the order under section 106 should be set aside.

[27 Cal. page 985.]

(D.) DURGA DAS RAKHIT vs. UMESH CHUNDRA SEN.

Complaint—Institution of complaint and necessary preliminaries—Charge of furnishing false information in Land Acquisition proceedings—Omission to refer to particular false statement on which accusation made—Penal Code (Act XLV of 1860), section 177—Land Acquisition Act (I of 1894), sections 9 and 10, Contempt of Court—Penal Code (Act XLV of 1860), section 174—Non-attendance on service of summons—Appearance by Mukhtar—Criminal Procedure Code (Act V of 1898), section 205.

A Magistrate issued processes for the attendance of the accused on the complaint of the Land Acquisition Deputy Collector for having given false information within the terms of section 177 of the Penal Code and section 10 of the Land Acquisition Act in certain written statements that they had made to the Collector. The complaint was that the written statements were false. The documents, however, contained more than one statement of fact. Neither in the complaint made by the Deputy Collector nor in his examination by the Magistrate was any reference made to any particular statement made by either of the accused as being a false statement, nor had the Deputy Collector put in the written statements, upon which he desired to proceed either with his written complaint or at the time of his examination by the Magistrate.

Held, that the complaint was bad and the cause should not be allowed to proceed in its present form. The Magistrate was bound to require from the complainant the written statements on which the proceedings were founded, and also to ascertain from him the particular statement or statements on which the accusation was made. In a summons case on the day fixed for trial an appearance was made on behalf of an accused person by his Mukhtar who asked the Magistrate under section 235 of the Code of Criminal Procedure to dispense with the personal attendance of the accused. The Magistrate, however, regarding the non-attendance of the accused as a contempt of Court, called upon him to show cause why he should not be prosecuted under section 174 of the Penal Code for non-attendance on service of summons.

Held, that the accused did make an appearance, though not a personal appearance, on service of summons, but that he did not personally attend should not under the circumstances have been regarded as an offence under section 174 of the Penal Code.

[27 Cal. page 990.]

(A.) RAHIMUDDI *vs.* ASGAR ALI.

Charge—Alteration of charge—Conviction of rioting with the common object of theft—Finding by Appellate Court of different common object—Legality of conviction on such finding—Penal Code (Act XLV of 1860), sections 147 and 379—Code of Criminal Procedure (Act V of 1898), section 423.

The accused were convicted by a Magistrate of theft of mangoes and also of rioting, the common object of the unlawful assembly being the forcibly taking away of mangoes belonging to the complainant. On appeal the Sessions Judge not only found that the common object was not the taking of the mangoes, but that the dispute between the parties was as to certain land. He, however, dismissed the appeal and confirmed the conviction.

Held, that as the accused were convicted on a different finding of fact from that to which they were called upon to plead and to defend themselves at the trial they were entitled to an acquittal.

[27 Cal. page 992.]

(B) BHAGRATHI NAIK *vs.* GANGA-DHAR MAHANTY.

Cattle Trespass Act (I of 1891), section 22—Illegal seizure of cattle—Fine—Compensation.

A Magistrate is not competent, under section 22 of the Cattle Trespass Act, to pass any

sentence of fine, he can only award compensation for the illegal seizure of cattle.

[27 Cal. page 998.]

(C.) KETABOI *vs.* QUEEN-EMPRESS.

Security for good behaviour—Jurisdiction of Magistrate over person not residing within his jurisdiction—Reputation—Code of Criminal Procedure (Act V of 1898), section 110.

It is only when a person within the limits of a Magistrate's jurisdiction, that is, who is residing within the limits of such jurisdiction, is found to be a person of the description given in section 110 of the Code of Criminal Procedure, that the Magistrate can take action under that section, and it is not contemplated that the Magistrate in such a case should issue a warrant so as to pursue the person concerned into another jurisdiction. Under the terms of section 110 of the Criminal Procedure Code the reputation which the person is found to have means the reputation of that person in the neighbourhood in which he resides.

[27 Cal. page 1041.]

(D.) NEMAI CHATTORAJ *vs.* QUEEN-EMPRESS.

Kidnapping—Kidnapping from lawful guardianship—Completion of such offence—Whether a continuous offence—Constructive possession—Penal Code (Act XLV of 1860), sections 360, 361 and 363.

J, a minor girl, was taken away from her husband's house to the house of R, and there kept for two days. Then one M came and took her away to his own house and kept her there for twenty days, and subsequently clandestinely removed her to the house of the petitioner, and from that house the petitioner and M took her through different places to Calcutta. The petitioner was convicted under section 363 of the Penal Code for kidnapping a girl under 16 years of age from the lawful guardianship of her husband.

Held (by the majority of the FULL BENCH), that the taking away out of the guardianship of the husband was complete before the petitioner joined the principal offenders in taking the girl to Calcutta, and that the petitioner, therefore, could not be convicted under section 363 of the Penal Code.

Held, further, that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as she is kept out of such guardianship.

Per RAMPINI, J.—The offence of kidnapping under section 363 is not necessarily or in all cases complete as soon as the minor is removed from the house of the guardian; when the act of kidnapping is complete is a question of fact to be determined according to the circumstances of each case.

[28 Cal. page 7.]

(A.) KALI PROSAD MAHISAL
vs. QUEEN-EMPRESS.

Criminal Proceedings—Irregularity in Proceedings—Misjoinder of parties—Joint trial on charges of criminal breach of trust by carrier and receiving stolen property—Objection taken for first time in revision—Code of Criminal Procedure (Act V of 1898), sections 238 and 527, Penal Code, sections 407 and 411.

K. S., K. P. and K. M. were tried jointly and convicted: K. S., under section 407 of the Penal Code, K. P. and K. M. under section 411 of that Code. No objection to the joint trial was taken either before the trying Magistrate or before the Appellate Court.

Held, in revision (upon objection being taken to the joint trial of K. S. with K. P. and K. M.) that a misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider under the terms of section 537 of the Code of Criminal Procedure whether it has in fact occasioned a failure of justice. *In the matter of Abdur Rahman*, 1. L. R., 27 Cal., 839, followed.

Held, further, that having regard to the explanation to section 537 of the Code of Criminal Procedure the objection was not one which could be properly taken in revision; that the objection should have been raised at an earlier stage of the proceedings; and that, therefore, it might be taken that not having been so raised it had not in fact occasioned a failure of justice.

[28 Cal. page 10.]

(B.) KARU KALAL vs. RAM
CHARAN PAL.

Criminal Proceedings—Irregularity in Proceedings—Misjoinder of Parties—Joint trial on charges of theft and receiving stolen property—Code of Criminal Procedure (Act V of 1898), sections 233, 239 and 537—Penal Code (Act XLV of 1860), sections 381 and 411.

K. K. and J. were tried jointly and convicted, L. under section 391 of the Penal Code

of stealing tea in the possession of his master, K. and J. under section 411 of the Penal Code of dishonestly retaining some stolen tea which they had received from L. It was contended that the joint trial of a person charged under section 411 of the Penal Code with a person charged under section 381 of the Penal Code, was necessarily void and the conviction bad.

Held, that a misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider whether, under the terms of section 537 of the Code of Criminal Procedure, it has in fact occasioned a failure of justice. *Bishnu Eanwar vs. Empress*, 1. C. W. N., 35, referred to. *In the matter of Abdur Rahman*, 1. L. R., 27 Cal., 839, and *Kali Prosad Mahisal vs. Queen-Empress*, 1. L. R., 28 Cal., 7, followed.

[28 Cal. page 63.]

(C.) GOBINDA PERSHAD
PANDEY vs. GARTH.

Defamation—Proof necessary in charge of defamation—Penal Code (Act XLV of 1860), sections 499 and 500—Sessions Judge, Jurisdiction of—Power of Sessions Judge on revision—Conviction of offence without charge—Order of Appellate Court for re-trial—Criminal Procedure Code (Act V of 1898), sections 232 to 423.

To constitute the offence of defamation as defined in section 499 of the Penal Code, it is not necessary that the evidence should show that the complainant has been injuriously affected by such alleged defamation. The law requires merely that there should be an intent that the person who makes or publishes any imputation should do so intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person.

Where an accused was charged under section 471 of the Penal Code of dishonestly using as genuine a false document, and the Magistrate convicted him under section 500 of that Code of defamation, of which offence there was no charge framed against him.

Held, that the Sessions Judge, if he thought a new trial necessary, should have proceeded under section 232 of the Criminal Procedure Code, under which an Appellate Court is competent to direct a re-trial, and not as he did under section 423. *Quere*. Whether an Appellate Court has, under section 428 of the Code, general power to order a new trial.

[28 Cal. page 102.]

(A.) BIDHU CHANDALINI *vs.* MATI SHEIKH MONDAL.

Complaint—Dismissal of complaint by District Magistrate—absence of complainant—Revival of, and further inquiry into, case by same Magistrate—Review—Code of Criminal Procedure (Act V of 1898), sections 259, 369, 437.

Complainant filed a complaint under sections 341, 323, 447 and 426 of the Penal Code. The District Magistrate, after recording the statements of the complainant, ordered the issue of a summons to the accused returnable on the 19th April. On that day the complainant was absent when the case was called on. The District Magistrate dismissed the case under section 259 of the Code of Criminal Procedure. Subsequently on the application of the complainant the District Magistrate revived the case and made it over to an Honorary Magistrate for trial.

Held, that the terms of section 369 of the Code of Criminal Procedure must be read as controlled by section 437 of that Code. Section 437 does not limit the power of a District Magistrate to make, or order a Subordinate Magistrate to make, further inquiry into a case in which an order of dismissal or discharge may have been passed by a Subordinate Magistrate. There is no bar to a District Magistrate making further inquiry into a case in which such order may have been passed by himself.

[28 Cal. page 104.]

(B.) KUMUDINI KANTA GUHA *vs.* THE QUEEN-EMPRESS.

Criminal Proceedings—Joint trial—Misjoinder of parties—Discharge of accused on ground of misjoinder by Sessions Judge—Direction that accused be re-tried—Jurisdiction—Code of Criminal Procedure (Act V of 1898), sections 232, 239, 423 and 537—Penal Code (Act XLV of 1860), sections 411 and ⁴¹⁴₁₀.

M. and K. were convicted at the same trial of receiving stolen property, namely, currency notes, as well as of assisting in concealing or disposing of such notes which they knew or had reason to believe were stolen property. Each of them were charged with the same offences only in respect of a currency note of Rs. 500, but in respect of the charges on two other notes of Rs. 100 each, the charges against each of them related only to one of these notes.

Held, that there had been a misjoinder of parties, the transactions being altogether separate and distinct against each of them.

Held, further, that the Sessions Judge in discharging one of the accused on the ground of misjoinder of parties had power

to add to that, order a direction that the accused should be re-tried. It was not obligatory on him to leave to the discretion of the Magistrate the course which should be taken in such a matter, and it was not intended by the order of discharge in the case of Queen-Empress *vs.* Chandi Singh, I. L. R., 14 Cal. 395, to free the accused in that case from the consequences of his acts or to declare that no order for re-trial could be passed in such a case. Queen-Empress *vs.* Fakirapa, I. L. R., 15 Bom. 491, and Empress of India *vs.* Murari, I. L. R., 4 All., 147, referred to.

8 Cal. page 164.]

(C.) JAL MAHMUD SHAIK *vs.* SATCOWRI BISWAS.

Compensation—Order of payment of compensation and imprisonment in default of such payments—Legality of such order—Compensation recoverable as fine—Code of Criminal Procedure (Act V of 1898), sections 250, 386, 387, 388, and 389.

A Magistrate passed an order under section 250 of the Code of Criminal Procedure directing the complainant to pay compensation in a certain sum, and he further directed that "if the compensation is not realized within eight days, the complainant shall undergo 30 days' simple imprisonment."

Held, that the order was contrary to section 250 of the Code of Criminal Procedure. That section directs "compensation shall be recoverable as if it were a fine," and section 386 and the following sections of the Code direct by what means a fine shall be recovered. These sections would, therefore, be applicable for realization of the money ordered to be paid as compensation. But in regard to an order of imprisonment in such a case, section 250, proviso (2), declares that "if the compensation cannot be recovered, 'simple imprisonment may be awarded for such term not exceeding 30 days.' The alternative (imprisonment) therefore can only be awarded, if compensation cannot be recovered.

[28 Cal. page 211.]

(D.) QUEEN-EMPRESS *vs.* DOLEGOBIND DASS.

Complaint—Dismissal of Complaint—Discharge of accused—Re-arrest of accused without previous order of discharge being set aside—Code of Criminal Procedure (Act V of 1898), sections 252, 253, 403, 436 and 437—Indian Post Office Act (VI of 1898), section 52.

There is no express provision in the Code of Criminal Procedure to the

effect that the dismissal of a complaint shall be a bar to a fresh complaint being entertained so long as the order of dismissal remains unreversed. An accused person was arrested on the charge of having stolen a registered letter from the Post Office, and was brought up before a Bench of Presidency Magistrates, charged with offences under section 381 of the Penal Code, and section 52 of the Post Office Act, 1898. He was discharged on the same day, the Bench considering the evidence insufficient. Subsequently the accused was re-arrested on substantially the same charge and was committed by the Chief Presidency Magistrate for trial upon further and fresh evidence. Upon an application by the accused to have the order of commitment discharged on the ground that the Chief Presidency Magistrate had no jurisdiction to make the commitment, as the previous order of discharge had not been set aside.

Held, that the commitment was good. *Nilratan Sen vs. Jogesh Chandra Bhattacharjee*, I. L. R., 23 Cal., 983, distinguished; *Grish Chunder Roy vs Dwarka Dass, Agarwalah*, I. L. R., 24 Cal., 528, dissented from; *Opoorba Kumar Sett vs. Probod Kumari Dasei*, I. C. W. N., 49, followed.

Held, further, that where a point is raised on behalf of the accused before he is called upon to plead, the Judge presiding at the sessions has no power under the charter to refer the matter to a Full Bench.

[28 Cal. page 217.]

(A.) SUNDAR DASADH vs. SITAL MAHTO.

Penal Code (Act XLV of 1860), section 206—Attachment of crops in execution of certificate under Public Demands Recovery Act—Want of sanction not occasioning failure of justice—Code of Criminal Procedure (Act V of 1898), sections 195, 438, and 537—Public Demands Recovery Act (Bengal Act X of 1895), sections 7, 8, 12 and 22.

The cutting and carrying off of crops which the accused knew to be under attachment in execution of a certificate under the Public Demands Recovery Act of 1895 is an offence under the latter part of section 206 of the Penal Code. The amount due under the certificate cannot be regarded as a forfeiture or fine, but is money due under a decree. The certificate having the force and effect of a decree of a Civil Court. Where such an offence was taken cognizance of by a Magistrate without sanction for the prosecution being given, as should have been the case, but there was nothing in the proceeding to show that the want of such sanction had in fact occasioned a failure of justice.

Held, that the conviction was not bad only on that account.

✓ [28 Cal page 251.]

(B) PARSII HAJRA vs. BANDHII DHANUK.

Code of Criminal Procedure (Act V of 1898), section 250—Compensation—False case—Imprisonment in default of payment of compensation—Summary proceeding—Conviction of offence under Penal Code (Act XLV of 1860), section 211.

It is only if the compensation ordered to be paid under section 250, proviso (2) of the Code of Criminal Procedure cannot be recovered that imprisonment can be awarded; therefore an order of imprisonment passed before any attempt is made towards recovery of the sum ordered to be paid as compensation is bad. Section 250 of that Code does not contemplate that compensation shall be awarded because a case is found to be false, but where the Magistrate is satisfied that the accusation is frivolous and vexatious. The words "frivolous and vexatious" in that section indicate an accusation merely for the purpose of annoyance, not an accusation of an offence which is absolutely false. The conviction by a Magistrate of a person of an offence under section 211 of the Penal Code in a summary proceeding is improper.

[28 Cal. page 253.]

(C.) DEO SAHAY LAL vs. QUEEN-EMPRESS.

Arrest—Cognizable offence—Escape from lawful custody—"For any such offence," meaning of Criminal Procedure Code (Act V of 1898), section 54—Penal Code (Act XLV of 1860), sections 144 and 224.

The words in section 224 of the Penal Code "for any such offence" mean for any offence with which a person is charged or for which he has been convicted. So that it would be an offence for a man to escape from custody after he had been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. An accused person is no less guilty than a convicted person, if he escapes from lawful custody. In the present case the petitioners were arrested by the police under the authority of section 54 of the Code of Criminal Procedure. That arrest was perfectly lawful and the subsequent detention was in lawful custody. *Ganga Charan Singh vs. Queen-Empress*, I. L. R. 21 Cal., 337, distinguished.

[28 Cal. page 297.]

(A.) BAKTU SINGH vs. KALI PRASAD.

Transfer of Criminal Case—Grounds for transfer—Reasonable apprehension in the mind of the accused of Magistrate being biased—Suit by servant of state under Court of Wards, the District Magistrate as Collector being Manager—Code of Criminal Procedure (Act V of 1898), section 526.

Where the apprehension in the mind of the accused that he may not have a fair and impartial trial is of a reasonable character, then notwithstanding that there may be no real bias in the matter, the fact of incidents having taken place calculated to raise such reasonable apprehension ought to be a ground for allowing a transfer. In the matter of the *petition of J. Wilson*, 1 L. R., 18 Cal., 247, and *Dupeyron vs. Driver*, 1 L. R., 23 Cal., 495, referred to. The mere fact that the Magistrate of the District is in his capacity as Collector concerned in the management of an estate held by the Court of Wards is no ground for asking for a transfer from the district of a case brought by a servant of the estate and pending before a Subordinate Magistrate in the district.

[28 Cal. page 302.]

(B.) PROKASH CHUNDER SARKAR vs. RAM PRASAD PATTAK.

Jurisdiction—Costs—Order for assessment of, without notice to party affected thereby—Revision by High Court—Code of Criminal Procedure (Act V of 1898), section 148.

A Magistrate has no jurisdiction to pass an order under section 143 of the Code of Criminal Procedure making a party liable for a certain sum as costs without notice to him, so that he may have an opportunity of contesting the same.

[28 Cal. page 314.]

(C.) HARA KUMARY CHOWDHURANI vs. R. SAVI.

Mortgage—Dishonestly or fraudulently preventing debt being available for creditors—Debt—Attempt—Application to withdraw money paid into Court—Penal Code (Act XLV of 1860), sections 422 and 511.

The petitioners mortgaged their property and under the terms of the agreement certain

persons were appointed managers of the estate under certain conditions in regard to payment of monies realized by them. In execution of a decree obtained by the managers in suit brought in the names of the petitioners, a certain Putni Taluk was sold for Rs. 3,000. The debtor settled with the petitioners that on payment of Rs. 1,000 the sale was to be set aside. The money was paid into Court and an application was made by the petitioners for the withdrawal of this money. The Court, however, made no order on this application. The petitioners were convicted of an attempt to commit an offence under section 422 of the Penal Code.

Held, that having regard to the relation between the petitioners and their managers at whose instance the proceedings were taken, it could not properly be said that an attempt to commit an offence under section 422 of the Penal Code was made. That the interference of the petitioners and their application to obtain the money paid into Court might have been breaches of their contract with the mortgagees, but such conduct could not necessarily be regarded as dishonest or fraudulent so as to render them liable to punishment. Their attempt to get this money was more to put an end to the management than to prevent the money from being available for payment of their debt under the mortgage. *Nobin Chunder Mudduck*, 22 W. R., Cr., 46, referred to.

[28 Cal. page 339.]

(D.) KAMALA PRASAD vs. SITAL PRASAD.

Accomplice—Evidence—Corroboration of evidence given by—Accomplice by implication or in a secondary sense—Evidence Act (I of 1872), sections 114 and 133, Penal Code (Act XLV of 1860), section 381.

Ordinarily speaking the evidence of an accomplice should be corroborated in material particulars. At the same time the amount of criminality is a matter for consideration: when a person is only an accomplice by implication or in a secondary sense, his evidence does not require the same amount of corroboration as that of the person, who is an actual participator with the principal offender. In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the Courts must exercise careful discrimination and look at the surrounding circumstances, in order to arrive at a conclusion whether the facts deposed to by the person alleged to be an accomplice are borne out by these circumstances or whether the circumstances are of such a nature that

the evidence purporting to be given by the alleged accomplice should be supported in essential and material particulars by evidence *altunde* as to the facts deposed to by that accomplice.

[28 Cal. page 344.]

(A.) NAZAMUDDIN *vs.* QUEEN-EMPRESS.

Public servant, Salt Department—Peon attached to office of Superintendent of the Salt Department—Manager of Estate under Court of Wards—Penal Code (Act XLV of 1860), section 21, clause 9.

An officer in the service or pay of Government within the terms of section 21, clause (9) of the Penal Code, is one who is appointed to some office for the performance of some public duty.

Held, that a peon in the service and pay of Government and attached to the office of a Superintendent of the Salt Department is a public servant.

Held, further, that a Manager of an estate under the Court of Wards is not a public servant. *Reg. vs. Ramajirav Jivbajirav*, 12 Bom., H C. 1 and *The Queen vs. Arayi*, 1. L. R., 7 Mad., 17, referred to; *Queen-Empress vs. Mathura Prasad*, 1. L. R., 21 All., 127, dissented from.

[28 Cal. page 348.]

(B.) ISAB MANDAL *vs.* THE QUEEN-EMPRESS.

Evidence—Written statement recorded by police-officer during police investigation—Admissibility in evidence against person making it—Record—Intentionally giving false evidence—Proof necessary of each statement made—Code of Criminal Procedure (Act V of 1898), section 162—Evidence Act (I of 1872), section 35—Penal Code (Act XLV of 1860), section 193.

There is nothing in section 162 of the Code of Criminal Procedure which limits the prohibition of the use of a written statement recorded by a police-officer, as evidence to the matter of the charge which is actually under investigation by the police-officer when the statement is made.

The prohibition extends also to the use of such written statement against the person who is alleged to have made the statement. Such a written statement does not come within the description of a record within the meaning of section 35 of the Indian Evidence Act, nor is it admissible in evidence under that section. It is very irregular in a charge of intentionally giving false evidence to put the whole of a long statement bodily to a witness at once. A conviction on such a

charge could be properly had only on proof that the accused person had made to the police-officer each and every statement contained in the document.

[28 Cal. page 362.]

(C.) RAJ KISHORE PATTTER *vs.* JOY KRISHNA SEN.

Criminal Breach of Trust—Refusal to pay to a person money claimed by another—False claim—Suit brought by person claiming—Penal Code (Act XLV of 1860), section 406.

An accused person should not be convicted of criminal breach of trust on refusing to give to the complainant money which is claimed by another person as well as by the complainant, and which the accused denies is due to the complainant. The fact that other person has brought a suit to recover the amount claimed by him against the accused, is a complete answer to the charge of criminal breach of trust against the accused and to the findings of the Courts that the claim made by that other person was a false claim.

[28 Cal. page 397.]

(D.) QUEEN-EMPRESS *vs.* SURENDRA NATH SARKAR.

Accused—Improper discharge of—Commitment—Power of Sessions Judge and District Magistrate to order commitment, instead of directing fresh enquiry—Code of Criminal Procedure (Act V of 1898), sections 209, 307, 436, 437 and 532.

Under section 436 of the Code of Criminal Procedure in cases exclusively triable by the Court of Sessions, the Sessions Judge and District Magistrate have co-ordinate powers to order a commitment upon the evidence already taken, instead of directing a fresh enquiry by the inferior Court, which has improperly discharged the accused. *Queen-Empress vs. Krishna Bhat*, 1. L. R., 10 Bom., 319, referred to.

[28 Cal. page 399.]

(E.) DEBI SINGH *vs.* QUEEN-EMPRESS.

Warrant—Arrest—Accused, wrong description of—Onus of proof—Resistance to lawful apprehension—Criminal force to deter public servant from discharge of duty—Code of Criminal Procedure (Act V of 1898), section 75—Penal Code (Act XLV of 1860), sections 225B and 353.

A warrant of arrest, which contains a wrong description of the accused, is not a

valid warrant, and a conviction under sections 226B and 353 of the Penal Code of such accused person, who resisted or used criminal force upon his being arrested under such warrant, is illegal. In order to have a conviction for an illegal disobedience of a warrant, the onus is on the prosecution to show that the accused is the person, against whom the warrant has issued. It is not for the accused to show, that he is not the person against whom the warrant was issued.

[28 Cal. page 411.]

(A.) RAMAN SINGH *vs.* QUEEN-EMPRESS

Special Constables—Refusal by persons appointed to accompany police-officer to obtain authority of appointment and arms, whether refusal to serve as such—Arrest—Arrest on refusal, legality of—Public servant—Obstructing him from discharge of his duty—Riot Police (Act V 1861), sections 17 and 19—Penal Code (Act XLV of 1860), sections 147, 149 and 353.

N. S. and G. were appointed special constables under section 17 of the Police Act. A Police Inspector, accompanied by some police, went to their village and informed them that they had been so appointed, and requested them to accompany him to the police station of B, which they declined to do. The Inspector then had N arrested, whereupon N. shook himself free, and N. S. and G. with other persons who had assembled, abused and threatened the police, and compelled them to withdraw from the village. N. S. and G. were convicted under section 19 of the Police Act, and they were also convicted with other persons under section 353 read with section 149 of the Penal Code.

Held, that the refusal of N. S. and G. to accompany the Inspector constituted no offence under section 19 of the Police Act, as the order was intended not for any purpose of police duty, but simply that they might obtain the authority of their appointment and the necessary arms.

Held, further that the refusal of N. to accompany the Inspector was not an offence for which N. could be arrested, and, as the police, when obstructed, were not acting in lawful discharge of their duty, none of the persons concerned could be convicted of an offence under section 353 of the Penal Code, but that they were guilty of rioting under section 147 of that Code. *Empress vs. Dalip. I. L. R.* 18 All. 246, approved of. *Chundar Coomar Sen vs. Queen-Empress*, 3 C. W. N., 666, distinguished.

[28 Cal. page 416.]

(B.) JAGOMOHAN PAL *vs.* RAM KUMAR GOPE.

Immoveable property, dispute as to—Order of Magistrate, contents of—Breach of the peace—Opportunity to produce evidence—Sessions Judge, power of revision or reference—High Court, powers of—Code of Criminal Procedure (Act V of 1898), sections 45 and 435—Charter (Act 24 and 25 Vict. C. 104), section 15.

Proceedings under Chapter XII of the Code of Criminal Procedure are not proceedings with regard to which a Sessions Judge has any power of revision or reference, nor has he the power to call for the records in such proceedings. The High Court only can interfere under the power of superintendence conferred upon it by the Charter Act. The order of a Magistrate instituting proceedings under section 145 of the Code of Criminal Procedure should set out the grounds on which he is satisfied that a dispute likely to cause a breach of the peace existed, and the parties to the proceedings should be given an opportunity of adducing their evidence.

[28 Cal. page 423.]

(C.) REASUT *vs.* COURTNEY.

Jurisdiction—Reformatory School—Detention in, in lieu of sentence of imprisonment—Power of High Court to alter or set aside such sentence—Reformatory School (Act VIII of 1897), sections 8 and 16.

Section 16 of the Reformatory Schools Act does not in any way take away the jurisdiction of the High Court to alter or set aside the sentence, in substitution of which an order for detention is made. The power of the High Court remains intact to consider the propriety or legality of any sentence passed upon a youthful offender.

[28 Cal. page 434.]

(D.) KELLY *vs.* THE KING-EMPEROR.

Offences committed before Court of Sessions—Committal of such person by Court of Session for trial before itself—Charge—Proceedings to be drawn up on day of committal—Charges of perjury and forgery—Specific statements as to such charges—Code of Criminal Procedure (Act V of 1898), sections 195 and 477—Penal Code (Act XLV of 1860), sections 193, 46 and 471.

If a Court of Session proceeds to take action under section 477 of the Code of

Criminal Procedure it must, in the first instance, frame a charge so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the shape of a charge, the Sessions Court may then either commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose. R was examined as a witness by the Sessions Judge in a case. On the 15th of February the Sessions Judge delivered judgment in that case, and, on the same day purporting to act under section 477 of the Code of Criminal Procedure, had R arrested and committed to jail on charges under sections 193, 466 and 471 of the Penal Code. The 25th of February was fixed for commencing the preliminary inquiry. No proceeding was drawn up on charges framed on the 15th. On the 16th of February an order was recorded by the Sessions Judge as follows: "In the course of the Sessions trial decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered, that R has committed offences under sections 193, 466 and 471 of the Penal Code, and that it is my duty to hold an enquiry preliminary to committing him to the High Court to be tried for those offences. R was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding. He will be produced before me, as directed in the warrant, on the 15th of February, when evidence will be taken."

Held, that the proceeding of the 16th of February contained no particulars of the statements made and act done by R upon which perjury and forgery were charged against him, and was not in any sense a charge or order of commitment and was not warranted by law.

[28 Cal. page 446.]

(4.) ANESH MOLLAH vs. EJAHAR-
UDDI MOLLAH.

Jurisdiction—Code of Criminal Procedure (Act V of 1898), section 145—High Court—Non-joinder of necessary parties—Subordinate Criminal Courts Circumstances under which they have jurisdiction.

The High Court has power to set aside a proceeding under section 145 of the Code of Criminal Procedure on the non-joinder of parties, whose presence is essentially necessary for the proper and effectual decision of the case: *Laldhari Singh vs Sukdeo Narain Singh*, 1 L. R. 27 Cal., 892, followed. Under section 145 of the Code of Criminal Procedure a special jurisdiction is vested in the

Subordinate Criminal Courts under special circumstances and for a special purpose. When either the special circumstances do not exist, or when the order made under section 145 does not attain the purpose, for which the jurisdiction is created, then the special jurisdiction vested under that section falls to the ground. The circumstances under which the jurisdiction springs up are circumstances which give rise to an apprehension of a breach of the peace, and if there is no apprehension of a breach of the peace, there is no jurisdiction to make the order. The purpose of the Legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under section 145, it must be taken to have been without jurisdiction.

[28 Cal page 504.]

(B) KAZI ZEAMUDDIN AHMED vs.
QUEEN-EMPRESS.

Riot—Owner or occupier of land on which riot takes place. Liability of—Agent - Manager—Act of commission as well as omission—Knowledge Penal Code (Act XLV of 1860), section 154.

The accused was the sole proprietor of village A. A serious riot involving loss of life took place at village A and the accused's naib instead of doing anything to prevent or suppress the riot accompanied the rioters and stood close by while the riot was going on, after which he absconded. The accused, who had no knowledge that a riot was likely to be committed, was convicted under section 154 of the Penal Code and fined.

Held (RAMPANI and PRATT, J.J.), a landlord is liable under section 154 of the Penal Code for the acts of commission as well as omission not only of himself, but of his agent or manager. Knowledge on the part of the owner or occupier of the land, of the acts or intentions of the agent, is not an essential element of an offence under section 154 of the Penal Code, and he may be convicted under that section though he may be in entire ignorance of the acts of his agent or manager. RAMPANI, J.—There seems to be no ground for holding that section 154 is intended in order to punish the landlord, where his agent has not rendered himself liable to the criminal law, and that when the agent has done so, then his liability is at an end. On the contrary, the provisions of the section impose on non-resident landholders and their agents the duty of maintaining the public peace and preventing unlawful assembly and riots on their estates and render the former liable for any dereliction in the discharge of this duty: *Queen-Empress vs Payag Singh*, 1 L. R., 12 All. 550, followed. *The Queen vs. Surroop Chunder Paul*, 12 W. R. Cr., 10. *Turban Dass vs. Empress*, 40 W. R.,

691: Queen-Empress vs. Huranath Roy, 3 W. R. Cr., 54. In the matter of Radha Nath Chowdhry, 7 O. L. R., 289, referred to. AMRER ALI J.—Owners of property are made responsible by law for the negligence of their agents or managers, but not for their criminal acts. A charge of neglect assumes that the agent is not directly concerned in the commission of the offence. If he is so concerned, it ceases to be neglect, it is a crime. It would be straining the law to make the absent owner, who has himself no knowledge of the occurrence, liable for not giving information of a riot that has taken place, if his agent takes part in it, and as a rioter actually taking part in it, does not, as a matter of course, give notice of it.

[28 Cal. page 571.]

(A.) ABALU DAS vs. THE KING-EMPEROR.

Murder—Provocation, grave and sudden—Accused—Wife—Intrigue—Culpable homicide not amounting to murder—Penal Code (Act XLV of 1860), sections 300, 302 and 304.

The deceased H lived in the house of the accused A who contracted an intimacy with L, the wife of A, in consequence of which he was turned out of the house. Subsequently on a certain night H, at the invitation of L, went to the house of A, and was taken inside by her. Thereupon A, and the other accused, relatives of his, seized H, carried him off to some distance, beat him, broke his arms and a leg, and left him. Three days later H died in consequence of the injuries. All the accused were convicted under section 302 of the Penal Code and sentenced to transportation for life.

Held, that the circumstances under which H was found in the house of A on the night of the crime were sufficient to cause grave and sudden provocation to A and his relatives, within the meaning of section 300, exception (1), of the Penal Code and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after H was caught in the house in the company of L. Conviction altered to one under section 304 of the Penal Code and sentence reduced.

[28 Cal. page 594.]

(B.) SHEOPRAKASH SINGH vs. W. D. RAWLINS.

Cross-examination—Witness—Accused—Defence—Evidence Act (I of 1872), section 54—Code of Criminal Procedure (Act V of 1898), section 257—Prosecution.

Certain witnesses for the prosecution were examined. The accused applied to the Court

for an adjournment to enable them to cross-examine the witnesses by Counsel. The application was refused, and the accused being called upon to cross-examine, were not in a position to do so. The accused then applied that the witnesses should be summoned as witnesses for the defence. The witnesses were summoned, and, when the Counsel for the accused proceeded to cross-examine them, he was not allowed to do so.

Held, the mere fact that the accused had been compelled to treat the witnesses for the prosecution as their own witnesses did not change their character. That, although the accused were compelled to obtain their attendance as witnesses for the defence, they were really summoned under section 267 of the Code of Criminal Procedure "for the purpose of cross-examination," and the Magistrate was wrong in refusing to allow their cross-examination.

[28 Cal. page 613.]

(C.) GHATU PRAMANIK vs. KING-EMPEROR.

Insane delusion—Unsoundness of mind—Criminal liability, test of—Penal Code (Act XLV of 1860), section 84.

Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof is to be therefore excused, depends on the nature of the delusion. If he labours under such partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility, as if the facts, with respect to which the delusion exists, were real. The accused was convicted of having murdered his brother-in-law, a lad, 8 years old. In his confession to the Magistrate the accused stated that he had seen the deceased arrange a clandestine meeting between his wife and a young man, whom he actually saw enter his wife's room some time before midnight and again leave it after a considerable interval, and that in consequence of what he saw he had not a wink of sleep that night and was devoid of his senses at the time he killed the deceased.

Held, that there was no doubt the accused did actually believe he had ocular proof of his wife's infidelity, and that if he had acted under the immediate influence of such a delusion, the estimate of his guilt must be made upon the basis of the actual existence of the facts in regard to which the delusion existed, and had the accused acted under the immediate influence of such provocation, his guilt would have been greatly reduced; but as he did not do so, his offence was murder under section 302 of the Penal Code, nor was there any ground for the application of section 84 of that Code.

[28 Cal. page 689.]

(4.) YASIN vs KING-EMPEROR.

Confession, retracted confession. evidential value of, against maker and co-accused — Corroboration—Convictions, evidence of previous—Accused, examination of, in respect of previous convictions—First offences—Sentence—Evidence Act (I of 1872), section 91—Criminal Procedure Code (Act V of 1898), sections 842 and 511—Penal Code (Act XLV of 1860), sections 411 and 457.

A retracted confession should carry practically no weight as against a person other than the maker; it is not made on oath, it is not tested by cross-examination, and its truth is denied by the maker himself, who has thus lied on one or other of the occasions. The very fullest corroboration would be necessary in such a case, far more than would be demanded for the sworn testimony of an accomplice on oath. In order to support a charge of a previous conviction, there should be on the record a copy of some judgment or extract from a judgment, or some other documentary evidence of the fact of such previous conviction, as is required by section 91 of the Evidence Act, or section 511 of the Code of Criminal Procedure. The examination by a Magistrate of the accused in respect of such previous conviction is without legal warrant or justification; *Basanta Kumar Ghattak vs. Queen-Emperess*, I. L. R., 26 Cal., 49, followed.

[28 Cal. page 709.]

(B.) LOLIT MOHAN MOITRA vs. SURJA KANTA ACHARJEE.

Transfer—High Court, power of, to transfer case under section 145 of the Code of Criminal Procedure—Bias, reasonable apprehension of—Witnesses, convenience to—Meaning of "case" and "criminal case"—Specific Relief Act (I of 1877), section 9—Code of Criminal Procedure (Act V of 1898), sections 4, 6, 107, 110, 145, 178, 192, 340, 342, 435, 487, 489, 526, 527, 528, and 556—Charter Act (24 and 25 Vic., c. 104), section 15—Letters-Patent, section 29.

Held, (per Goss, J.) an investigation in a case under section 145 of the Criminal Procedure Code is an inquiry within the meaning of clause (a) of section 526 of that Code. A Court of a Magistrate taking cognizance of a case under section 145 is a Criminal Court within the meaning of the Criminal Procedure Code. The expression "criminal case" in section 526 may be understood as simply distinguished from a civil case, being a case over

which a Criminal Court has jurisdiction. It is doubtful whether under the section 526 the Legislature meant to confer on the High Court the power of making a transfer in cases other than those in which a person is charged with an offence. The High Court may, however, under section 15 of the Charter Act, direct the transfer of a case under section 145 of the Criminal Procedure Code, which a Magistrate has taken cognizance of. Next to the importance of deciding a case fairly and impartially is the importance of conducting oneself in such a manner as to inspire in the minds of the parties a confidence that nothing but absolute justice would be done. If, therefore, by reason of the words or conduct of a Magistrate or Judge, before whom a case is pending, any party reasonably apprehends that there is a bias against him in the mind of the officer concerned, it would be expedient for the ends of justice to transfer the case from his files to that of some other officer competent to try it, though there may not be any actual bias; *Dupeyron vs. Driver*, I. L. R., 23 Cal., 495; and *The Legal Remembrancer vs. Bhairab Chandra Chakraborty*, I. L. R., 25 Cal., 727, referred to.

Held (per TAYLOR, J.)—The phrases, "case" and "criminal case," in the Criminal Procedure Code are not co-extensive and are not used indiscriminately or interchangeably. The phrase "criminal case" is intended to be used in a limited sense, and not to apply to every case cognizable by a Criminal Court. It is doubtful whether the High Court has power under section 526 to transfer cases, which do not relate to matters which may strictly be described as criminal as relating to a crime or offence under the law. The power, however, exists under section 29 of the Letters-Patent, wherein the phrase "criminal case" appears to be used without the distinction which apparently exists in the Criminal Procedure Code in respect of cases tried by a Criminal Court as opposed to civil cases.

[28 Cal. page 797.]

(C.) KALIL MUNDA vs. KING-EMPEROR.

Conspiracy—Abetment of conspiracy, what amounts to evidence of—Attempt to murder—Mischief by fire—Indian Evidence Act (I of 1872), section 10—Penal Code (Act XLV of 1860), sections 107, 108, 109, 117, 307 and 486.

Conspiracy consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means, and the conspiracy is complete, if two or more than two should agree to do an illegal thing. Where it is shown that there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any

one of such persons in reference to their common intention may be proved both for the purpose of proving the existence of the conspiracy, as also for showing that any such person was a party to it. Conspiracy is not a substantive offence in India, but is incorporated in the law of abetment of offences. In order to constitute the offence of abetment by conspiracy, there must be a combining together of two or more persons in the conspiracy and an act, or illegal omission must take place in pursuance of that conspiracy and in order to the doing of that thing. It is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused. Nor is it necessary that the abettor should concert the offence with the person who commits it. It is sufficient, if he engages in the conspiracy in pursuance of which the offence is committed.

[29 Cal. page 128.]

(A.) **EMPEROR vs. LYALL**

Jury—Verdict of jury, disagreement with, by Judge—Reference to High Court—Procedure by High Court—Evidence, consideration of—Code of Criminal Procedure (Act V of 1898), sections 307 and 451—Penal Code (Act XLV of 1860) sections 147, 149, 325, 343—Assam Labour and Emigration Act (VI of 1901), section 210.

Section 307 of the Code of Criminal Procedure requires that a High Court, in dealing with a case referred under it, shall consider the entire evidence on the case, and next, after giving due weight to the opinions of the Sessions Judge and the Jury, shall deliver judgment. The High Court in such a case is not bound to accept the opinion of the Jury, if it is not shown to be perverse or clearly or manifestly wrong. Without considering the entire evidence the High Court could not be in a proper position to give due weight to the opinions of the Sessions Judge and of the Jury.

[29 Cal. page 208.]

(B.) **KUNJA BHARI DASS vs. KHETRA PAL SING.**

Possession—Decree of Civil Court, duty of Magistrate—Code of Criminal Procedure (Act V of 1898), section 145.

Where in execution of a decree a Civil Court had given symbolical possession of the lands in dispute to the first party on the 9th September 1900, and proceedings under section 145 of the Code of Criminal Procedure were instituted between the parties to the decree in the following December, and the Magistrate found and maintained the possession of the second party:

He'd, that the Magistrate was bound to give effect to the decree of the Civil Court and to maintain the party in possession who under the decree had already been put in possession of the property in dispute: *Doulat Koor vs. Rameswari Koori*, I. L. R., 26 Cal., 635, referred to.

[29 Cal. page 211.]

(C.) **SURAT LALL CHOWDHRY vs. EMPEROR.**

Transfer—Application for adjournment of trial before hearing—Duty of Court to grant reasonable adjournment—Refusal to adjourn trial effect of on subsequent proceedings—Code of Criminal Procedure (Act V of 1898), section 526, cl. (8).

The law does not require that an application for postponement under sub-section (8) of section 26 of the Code of Criminal Procedure, or an application to the High Court for transfer should be made within any particular period before the date fixed for the hearing. It requires only that the party should notify to the Court before which the case is pending before the commencement of the hearing, his intention to make an application for the transfer of the case. If such an intention is notified, at however short a time before the commencement of the hearing, the Court before which the case is pending is bound to exercise its powers of postponement or adjournment without reference to any opportunity that the party might have had of making an application at some earlier time. The refusal to grant such an application for postponement is illegal, and the whole of the proceedings that follow cannot be supported. *Queen Empress vs. Gayatri Prasanno Ghosal*, I. L. R., 15 Cal., 455, followed; *Queen Empress vs. Virasami*, I. L. R., 19 Mad., 375, distinguished.

[29 Cal. page 214.]

(D.) **RAM LOCHAN SARGAR vs. QUEEN-EMPRESS.**

Hiring and harbouring persons hired for an unlawful assembly, ingredients of offences of proof of unlawful assembly—Penal Code (Act XLV of 1860), sections 141, 150 and 157.

Section 150 of the Penal Code refers to a particular unlawful assembly. Where, therefore, it is found that any person has hired or engaged any other person to join or become a member of a particular unlawful assembly, he is liable for any offence committed by any member of that unlawful assembly in the same way as if he had been a member of such unlawful assembly or himself had committed such offence. Section 157 of the Penal Code is of wider application. It provides for an

occurrence that may happen and makes the harbouring, receiving or assembling of persons who are likely to be engaged in any unlawful assembly an offence. There, again, the law contemplates the imminence of an unlawful assembly, and the proof of facts which in law would go to constitute an unlawful assembly. Therefore, where a Magistrate only found that "what the accused has been doing is collecting and harbouring men for the purpose of committing a riot should he find it his interest to do so," and there was no finding that there had been any unlawful assembly, composed of the persons said to have been hired by the accused and in the course of which some offence had been committed for which the accused would have been responsible equally with those who were members of that unlawful assembly, nor that an unlawful assembly made up of the elements provided for by section 141 of the Penal Code was in the contemplation of the accused.

Held, that the accused could not be convicted of having committed offences under sections 150 and 157 of the Penal Code.

[29 Cal. page 236.]

(A.) **EBRAHIM SIRCAR vs. EMPEROR.**

Public servant, Receiver appointed under Land Registration Act, whether a—Non attendance in obedience to order from public servant—Omission to produce document to public servant—Obstructing public servant in discharge of public functions—Disobedience to order duly promulgated by public servant—Persuasion to tenants not to pay rent to Receiver—Penal Code (Act XLV of 1860), sections 174, 175, 186, and 188—Land Registration Act (VII B. C. of 1876), section 56.

Held, that a Receiver appointed under section 56 of the Land Registration Act is not a public servant within the terms of sections 174, 175, 186, and 188 of the Penal Code.

Held, further, that such a Receiver was not a public servant legally competent to issue an order directing persons to attend before the Collector with their collection papers and rent receipts, and that disobedience to such an order did not constitute an offence either under section 174 or section 175 of the Penal Code.

Held, also, that an order by such a Receiver forbidding persons to pay rent to any person other than the Receiver was not an order promulgated by a public servant lawfully empowered to promulgate such order, and that

disobedience to such order was not an offence within the terms of section 188 of the Penal Code.

Held, further, that persuasion addressed to tenants in the absence of such Receiver not to pay rent to him was not an obstruction of the Receiver within the provisions of section 186 of the Penal Code.

[29 Cal. page 242.]

(B.) **BAIDA NATH MAJUMDAR vs. NIBARAN CHUNDER GHOSE.**

Criminal Procedure Code (Act V of 1898), section 145—Subordinate Magistrate, refusal to take proceedings—Institution of such proceedings by District Magistrate on some police report—Jurisdiction.

Where, on receipt of a police report, a Subordinate Magistrate, having come to the conclusion that there were no sufficient grounds for proceeding under section 145 of the Code of Criminal Procedure, declined to take such proceedings, and the District Magistrate on the same police report expressed a different opinion and instituted proceedings under section 145 of the Code.

Held, that the District Magistrate had acted with jurisdiction, and that order of the Subordinate Magistrate declining to proceed under section 145 could not operate as a bar to such action: *Chathu Rai vs. Niranjana Rai*, I. L. R., 2 Cal., 729, distinguished.

[29 Cal. page 244.]

(C.) **UMA CHARAN SINGH vs. EMPEROR.**

Warrant of attachment issued by a Civil Court—Attachment—Resistance to execution of—Legality of warrant—Rioting Legal common object—Penal Code (Act LXV of 1860), sections 141, 147, and 325—Civil Procedure Code (Act XIV of 1882), Schedule IV, Form No. (136).

Where resistance was made to the execution of a warrant issued by a Civil Court for the attachment of the moveable property of the judgment-debtor, the warrant being general in its terms and not purporting on the face of it to authorize the seizure of the property of the judgment-debtor, nor giving the peon executing it authority to enter his house, nor containing the name of the judgment-debtor.

Held, that the warrant was not one which could be lawfully executed against the judgment-debtor, and that resistance to the execution of such warrant did not constitute an offence under section 147 of the Penal Code.

Held, further, where one of the party resisting the execution had exceeded his rights and inflicted a severe injury on one of the opposite party, that his conviction of an offence under section 325 of the Penal Code was lawful.

Held, also, that section 141, clause (2) of the Penal Code, does not have the effect of making an assemblage of persons an unlawful assemblage, if the object with which they assembled was a perfectly legal one.

[29 Cal. page 379.]

(A.) MANGAN DAS *vs.* EMPEROR.

Misdirection—Charge to Jury—Duty of Judge to explain law—Law explained in addresses by pleaders on both sides to Jury—Criminal Procedure Code (Act V of 1898), sections 297 and 298—Penal Code (Act XLV of 1860), sections 147, 149, 323, 325 and 304.

Where a Sessions Judge, in charging a Jury under section 297 of the Code of Criminal Procedure, said: "The accused are charged with offences under sections 147, 323 with 149, 325 with 149, and 304 with 149. The law bearing on the case has been placed before you more than once in the addresses delivered by the learned pleaders on either side. I need not go into detail as to the law, therefore."

Held, that it was immaterial how much or how often the Jury may have been addressed by the pleaders on both sides upon the law. The responsibility of laying down the law for the guidance of the Jury rested entirely with the Judge, and a verdict arrived at by the Jury in the absence of any such direction on the law by which they should be guided could not be accepted as a valid verdict in the case.

Held, further, that although the common object of the unlawful assembly is stated in the charge, the Sessions Judge ought, in commenting upon the provisions of section 149 of the Penal Code, to draw the attention of Jury expressly to the common object.

[29 Cal. page 382.]

(B.) LOKENATH SHAH CHOWD RY *vs.* NEDU BISWAS.

Attachment of property by Magistrate under section 146 of the Criminal Procedure Code—Order relating to the management of such property—Interference by High Court—Jurisdiction—Criminal Procedure Code (Act V of 1898), sections 145, 146, and 425—Charter Act (24 and 25 Vic., c. 104), clause 15.

Where a Subordinate Magistrate passed an order under section 146 of the Criminal Procedure Code attaching certain lands, the sub-

ject-matter of proceedings under section 145 of the Code, and in management of this property granted a lease for a term of years at a certain annual rent, and subsequently, on the application of the lessee, the District Magistrate cancelled that lease and granted a fresh lease at a much lower rent.

Held, that no question of jurisdiction arose in the matter. That the High Court in the exercise of its Criminal Jurisdiction will not interfere with an order relating to the management of property under attachment by reason of an order under section 146 of the Code. A remedy can be easily obtained from a Civil Court.

V [29 Cal. page 385.]

(C.) GOBIND KOERI *vs.* EMPEROR.

Joint trial—Several persons—Offences not committed in same transaction—Irregularity—Illegality—Criminal Procedure Code (Act V of 1898), sections 235, 239, and 537—Penal Code (Act XLV of 1860), section 225—Indian Railways Act (IX of 1890), section 128.

Gobind Koeri was caught by some persons placing clods of earth on a railway line. While being taken away by them, Gobind Koeri was shortly afterwards rescued by Hira Mander and Manger Koeri. Gobind Koeri was charged under section 128 of the Railway Act for placing clods on the line. Hira Mander and Manger Koeri were charged under section 225 of the Penal Code with rescuing Gobind Koeri from lawful custody. All three persons were tried jointly in one trial and were convicted.

Held, that the offences not having been committed in the same transaction, the persons accused of each of these offences should have been tried separately, and that the Court had no jurisdiction to try them in the same trial: *Subrahmanya Ayyar vs. King-Emperor*, I. L. R., 35 Mad., 61, followed.

[29 Cal. page 387.]

(D.) MOHENDRO NATH DAS GUPTA *vs.* EMPEROR.

Witness, examined by Court—Opportunity to accused to cross-examine—Dishonestly receiving stolen property—Possession of forged or counterfeit currency notes—Distinct offences—Separate trial—Criminal Procedure Code (Act V of 1898), sections 233 and 540—Penal Code (Act XLV of 1860), sections 411 and 489 c).

During the trial of a case the accused obtained a process for the attendance of a

witness. Before the witness appeared the accused asked the Court to countermand the order for his attendance, but the Court refused to do so. When the witness attended, the accused declined to examine him. He was thereupon examined by the Court, and upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so.

Held, that under the circumstances the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him.

Held, also, that offences under sections 411 and 489 (c) of the Penal Code are distinct offences and should be tried separately.

[29 Cal. page 389.]

(A.) SARAT CHUNDER ROY vs.
BEPIN CHANDRA ROY.

Security for keeping the peace—Magistrate appointed in the district—Limits of jurisdiction—Criminal Procedure Code (Act V of 1898), sections 12 and 107.

A Magistrate appointed to act as a Magistrate in a district has, unless his powers have been restricted to a certain local area, jurisdiction over the entire district.

Held, therefore, where a Sub-Divisional Officer in a district instituted proceedings under section 107 of the Criminal Procedure Code against a person in his sub-division, and the District Magistrate transferred the case to the Court of a Deputy Magistrate of the first class appointed to act in the district, holding his Court at the head-quarters of the district, that the Deputy Magistrate had jurisdiction to try the case or to institute fresh proceedings against that person.

[29 Cal. page 392.]

(B.) ALIMUDDIN HOWLADAR vs.
EMPEROR.

Security for good behaviour from habitual offenders—Proceedings instituted by Magistrate on his own knowledge or suspicion—Transfer, right of accused to a—Criminal Procedure Code (Act V of 1898), sections 110, 117 and 191.

Where a Magistrate has framed a proceeding under section 110 of the Criminal Procedure Code against a party, and has proceeded in some measure, if not mainly, on his own knowledge of the character of that party,

such Magistrate is not a proper person to proceed with the trial under section 117 of the Code and inquire into the truth of the information upon which action has been taken.

9 Cal. page 393.]

(C.) KINOO SHEIKH vs. DARAST
ULLAH MOLLAH.

Security for keeping the peace—Order—Omission of express finding as to commission of offence within the section—Illegality—Jurisdiction—Criminal Procedure Code (Act V of 1898), sections 106 and 423—Penal Code (Act XLV of 1860), section 379.

Where a Subordinate Magistrate convicted the prisoner under section 379 of the Penal Code of theft and the District Magistrate on appeal merely affirmed the conviction and added to his judgment an order under section 106 of the Criminal Procedure Code binding over the petitioner to keep the peace:

Held, that he was not competent to pass such an order except on an express finding that the petitioner had committed an offence within the terms of section 106.

[29 Cal. page 409.]

(D.) BISHU SHAIK vs. SABER
MOLLAH.

Summary trial—Complaint disclosing facts constituting offence of a graver nature—Process, issue of—Trial for minor offences—Magistrate, jurisdiction of—Illegality—Criminal Procedure Code (Act V of 1898), section 260.

Where the complaint stated that the accused with a large number of other persons armed with swords and other deadly weapons came upon the complainant's land, threatened him, and, in spite of his remonstrances, cut his paddy, and the Magistrate in examining the complainant recorded merely the fact that the complainant stated that his paddy had been cut by the accused, and thereupon tried the accused summarily and convicted them under sections 143 and 379 of the Penal Code:

Held, that as the petition of complaint disclosed the commission of a much more serious offence than the offences for which the Magistrate had held a summary trial, and the examination of the complaint, which had not been properly recorded, did not show that such offence had not been committed, the Magistrate had acted without jurisdiction, and it was ordered, that he should hold a regular trial.

[29 Cal. page 410.]

(A.) KULDIP SAHAI vs. BUDHAN MAHTON.

Complaint to police—Report by police—Case ordered to be entered as true by Magistrate—Judicial enquiry—Right of complainant to be examined and to have his case tried—Criminal Procedure Code (Act V of 1898), sections 173, 200, and 202.

The complainant lodged information with the police charging certain persons with assault and with forcibly carrying off grain. The complaint was investigated and a report made to the Sub-Divisional Officer, who ordered the case to be entered as true, recording the offence under section 147 of the Penal Code. He, however, declined to order a judicial inquiry because, in his opinion, there was no chance of a conviction. The District Magistrate subsequently, on an application by the complainant, ordered a judicial inquiry by a Subordinate Magistrate, but on receipt of his report he declined to interfere in the matter:

Held, that the complainant was entitled to be examined under section 200 of the Criminal Procedure Code; and as his complaint had already been recorded as true, he was entitled to a process against the accused and for the attendance of his witnesses.

[29 Cal. page 412.]

(B.) ABDUL GHANI vs. EMPEROR.

Magistrate—Conviction—Offence exclusively triable by Court of Session—Accused, discharge of, by Sessions Judge on appeal—Retrial, no order for—Retrial and commitment of accused—Jurisdiction—Criminal Procedure Code (Act V of 1898), sections 215, 403, 423 and 530—Indian Post Office Act (VI of 1898), section 52.

Where an accused was convicted by a Magistrate of an offence exclusively triable by a Court of Session, and on appeal the Sessions Judge, without ordering further proceedings to be taken, set aside the conviction and discharged the accused on the ground that the Magistrate had no jurisdiction to hold the trial and fresh proceedings in respect of the same offence were taken by another Magistrate against the accused, who was committed for trial to the Court of Session:

Held, that where a Sessions Judge on appeal is empowered to order the retrial of an accused person and does not do so, but merely discharges him, there is nothing in law to prevent a Court of competent jurisdiction from instituting fresh proceedings against the accused and committing him.

Held, further, that inasmuch as section 423 of the Criminal Procedure Code contemplates an order for a retrial by a Court of competent jurisdiction, and the trial in this case had been set aside owing to the Magistrate having had no jurisdiction to hold it, no trial had in fact taken place, so that the Sessions Judge could not possibly have ordered a retrial.

[29 Cal. page 415.]

(C.) CHEMON GARO vs. EMPEROR.

Complaint—Rape—Adultery—Committal of accused on charge of rape—Addition by Sessions Judge of charge of adultery—Criminal Procedure Code (Act V of 1898), sections 199, 227, and 238—Penal Code (Act XLV of 1860), sections 376 and 497.

Before a criminal charge of adultery can be preferred, a formal complaint of that offence must be instituted in the manner provided by section 199 of the Criminal Procedure Code. Therefore, where an accused person was committed to the Sessions to stand his trial on a charge preferred by a husband of rape under section 376 of the Penal Code and the Sessions Judge at the trial added a charge of adultery under section 497 and acquitted the accused under section 376, but convicted him of rape under section 497:

Held, that the Sessions Judge had acted without jurisdiction. The fact that the husband appeared as a witness in the prosecution of the offence of rape cannot be regarded as amounting to the institution of a complaint for adultery. *Empress vs. Kallu*, I. L. R., 15 All., 233, followed.

[29 Cal. page 417.]

(D.) BHAI LAL CHOWDRY vs. EMPEROR.

Defence—Right of private defence—Public servant—Unlawful assembly—Public servant acting in good faith under colour of his office—Institution of proceedings properly—Criminal Procedure Code (Act V of 1898), sections 87, 88, and 190—Penal Code (Act XLV of 1860), sections 99, 143 and 183.

A Magistrate issued a proclamation under section 87 of the Criminal Procedure Code, and an order of attachment under section 88 of the property of certain absconding accused persons. During the attachment an objection was raised that the property being attached did not belong to the absconders. The police officer, on being informed by the patwari that it was their property, continued the attachment. A mob, among whom were the accused, assembled, and by assuming a threatening attitude prevented the

police officer from further attaching the property.

Held, the conviction of accused under sections 143, 183 of the Penal Code was right.

Held, further, that even supposing the property attached was not the property of the absconders, the rightful owner had no right of private defence of his property, inasmuch as the evidence showed that the police officer was acting in good faith under colour of his office; and even supposing the order of attachment might not have been properly made, that would in itself be no sufficient ground for such a defence.

Held, also, that where the attaching police officer sent a person to inform the Magistrate of what had taken place, and the Magistrate thereupon sent the Senior Inspector to the spot to take up the case, instructing him to take the statement of the attaching police officer as the first information of the occurrence and to send it in to him (the Magistrate) so that proceedings might be taken, it could not be said that the proceedings in the case had not been properly instituted.

[29 Cal. page 455.]

(A.) PANCHOO GAZI *vs.* EMPEROR.

Security for good behaviour—Surety bond—Acceptance by subordinate Magistrate of bond—Cancellation of such bond by District Magistrate—Jurisdiction—Criminal Procedure Code (Act V of 1898), sections 110 and 125.

Where the security bond of the petitioner, who had been bound over to be of good behaviour, and the surety bonds of his sureties had been accepted by the Sub-divisional Magistrate, and the District Magistrate on receiving a police report, stating that one of the sureties "was not at all a man of substance to stand surety for Rs. 100, he cannot be entrusted to stand surety of a bad character," cancelled the security bond of the petitioner under section 125 of the Code of Criminal Procedure.

Held, the order of the District Magistrate was made without jurisdiction.

[29 Cal. page 457.]

(B.) GIRISH CHANDER GHOSE *vs.* EMPEROR.

Complaint—Complainant accusing several persons—Proceedings, institution of, against one—Conviction—Refusal by Magistrate to proceed against other persons accused—Dismissal of complaint—Further enquiry—Notice—Criminal Procedure Code (Act V of 1898), sections 203 and 437.

A complaint was made to a Magistrate charging several persons with the commission of an offence. The Magistrate instituted

proceedings only against one of them, and after his conviction refused to issue processes against the others. On application by the complainant, the Sessions Judge, under section 437 of the Criminal Procedure Code, directed a further inquiry into the matter without notice to the other persons accused.

Held, that the refusal by the Magistrate to issue processes was an order of dismissal of the complaint within the meaning of section 203 of the Code in regard to which a further inquiry could be made.

Held, further, that it is not necessary that notice should issue to a person accused of an offence before an order can be properly passed under section 437 of the Criminal Procedure Code directing a further inquiry into a matter which has terminated in the summary dismissal of a complaint under section 203 of the Code in the absence of any person excepting the complainant: Hari Das Sanyal *vs.* Saritulla, 1. L. R., 15 Cal. 608, discussed.

✓ [29 Cal. page 479.]

1971

(C.) KINA KARMAKAR *vs.* PREO NATH DUTT.

Complaint—Dismissal of complaint as false, vexatious and malicious—False charge with intent to injure prosecution—Compensation—Criminal Procedure Code (Act V of 1898), section 250—Penal Code (Act XLV of 1860), section 211.

* Where, in a criminal trial, it is found by the Magistrate that, owing to the previous relations between the principals of the complainant and the accused, the complaint made was both false and malicious and made with some deliberation, and that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proceedings:

Held, that it was a case in which proceedings under section 211 of the Penal Code should have been instituted against the complainant, and that the Magistrate, in passing an order under section 250 of the Criminal Procedure Code directing the complainant to pay compensation to the accused, did not exercise a proper discretion.

[29 Cal. page 481.]

(D.) HOSSEIN SARDAR *vs.* KALU SARDAR.

Accused—Offence triable as a warrant case—Conviction of offence triable as a summons case—Absence of charge—Conviction, legality of—Material error—Criminal Procedure Code (Act V of 1898), sections 232, 242 and 254—Penal Code (Act XLV of 1860), sections 143 and 379.

When a case is being tried as a warrant case, and a charge is drawn up of an offence

which is triable as a warrant case, and it is intended to proceed against the accused also for an offence which is triable only as a summons case, that offence should form part of the charge.

Where an accused person was summoned for offences under sections 143 and 379 of the Penal Code and the trying Magistrate drew up a charge only for the offence under section 379, but convicted the accused only for the offence under section 143 of the Code :

Held, that the offence under section 143 should have formed part of the charge, and that the accused was misled in his defence by the absence of such a charge.

[29 Cal. page 483.]

(A.) **EMPEROR vs. NURI SHEIKH.**

Witnesses, statement of — Police investigation — Power of Magistrate to record statement not voluntarily made — Duty of Police when fear of witnesses being gained over — Magistrates, Bench of — Powers of member to act independently — Murder — Suspicion — Criminal Procedure Code (Act V of 1898), sections 15, 16, 162, 164 and 307 — Penal Code (Act XLV of 1860), section 302.

The accused was suspected of having killed wife. The police officer investigating the case, sent him to the Sub-divisional Magistrate, who, considering the case as one of suspicion only, released the accused on bail. After the *post-mortem*, the investigation was renewed, and three days after the release of the accused, the police officer sent a number of witnesses to an Honorary Magistrate, not having jurisdiction to try the case, to have their statements recorded under section 184 of the Criminal Procedure Code, on the ground that there was every chance of their being gained over. Their statements, as also that of the accused, were recorded by that Magistrate.

Held, that the police officer had no authority to place the witnesses before the Honorary Magistrate, as they did not appear voluntarily.

Held also, that the Honorary Magistrate being a member of an independent Bench exercising third class powers, could not, unless he was specially authorized, act independently that is to say — when not sitting on the Bench.

Held, further, that the object of section 162 of the Criminal Procedure Code would be defeated if, while a police officer cannot himself record any statement made to him by a person under examination, he can do so by

causing the persons to appear before a Local Magistrate not competent to deal with the case and to get their statements recorded by him. If the police officer had reason to believe that the witnesses were likely to be gained over by the accused or his party, the police officer should have sent in the accused and the witnesses to the Magistrate having jurisdiction without delay.

[29 Cal. page 489.]

(B.) **EMPEROR vs. PREO NATH CHOWDHURY.**

Criminal breach of trust by servant — Papers ordered to be destroyed — Property — Appropriation of papers by servant — Penal Code (Act XLV of 1860), sections 95 and 408 — Criminal Procedure Code (Act V of 1898), section 482.

The accused, a servant, was ordered by his employers in Calcutta to take certain bags of papers and forms belonging to them to their yard in Garden Reach, and there to burn and destroy them. Instead of doing this the accused brought some of them to Bow Bazar in Calcutta.

Held, that the act of the accused did not amount to criminal breach of trust under section 408 of the Criminal Procedure Code : *Emperor vs. Wilkinson* (1898), 2 C. W. N., 216, followed.

Held, also, that section 95 of the Penal Code has no application, unless the act in question would amount to an offence under the code, but for the operation of that section.

[29 Cal. page 491.]

(C.) **EMPEROR vs. MATHURA PRASHAD.**

Building — Commencement of second storey to house — Re-building house — Alteration — Encroachment whether permission from Municipality necessary — Order for demolition of addition — Bengal Municipal Act (III of 1884), sections 175, 235, 236, 237, 238 and 273 — Criminal Procedure Code (Act V of 1898), sections 438 and 439.

The accused commenced building a second storey to his house without permission of the Municipality. He was convicted under section 273 (1) of the Bengal Municipal Act of 1884, and, in addition to a sentence of fine, the Magistrate, as Chairman of the Municipality in the same order, directed the demolition of the addition made to the house.

Held, that the whole order was illegal. The case did not come under section 273 (1) of the Act, and there was no necessity of the accused to have obtained permission.

[29 Cal. page 493.]

(A.) **EMPEROR vs. BHELEKA AHAM.**

Murder—Unsoundness of mind—Disease brought on by voluntary drunkenness—Criminal liability—Penal Code (Act XLV of 1860), sections 84, 85 and 302.

Under section 84 of the Penal Code unsoundness of mind producing incapacity to know the nature of the act committed, or that it is wrong or contrary to law is a defence to a criminal charge, but by section 85 of that code such incapacity is no defence, if produced by voluntary drunkenness. If, however, voluntary drunkenness causes a disease which produces such incapacity, then section 84 applies, though the disease may be of a temporary nature.

[29 Cal. page 496.]

(B.) **KESHWAR LAL SHAHA vs. GIRISH CHANDER DUTT.**

Ganja—Sale of, without license by servant in presence of master—Receipt of money by servant—Servant, liability of—Bengal Excise Act (Bengal Act VII of 1878), section 58—Penal Code (Act XLV of 1860), sections 24, 40 and 114.

Where both master and servant were present at the sale of ganja in contravention of the terms of his license and the servant received the money paid for the ganja.

Held, that, having regard to the provisions of section 34 of the Penal Code, the servant was guilty of the offence of selling ganja without a license, and that, under the circumstances of the case, section 114 of the Penal Code had no application.

Queen-Empress vs. Haridas Sán, I. L. R., 17 Cal., 596, distinguished.

[29 Cal. page 606.]

(C.) **IN THE MATTER OF KALU MAL KHETRI.**

Excise—Commission by servant of licensed manufacturer or vendor of act in breach of conditions of license—Liability of servant—Bengal Excise Act (Bengal Act VII of 1878), section 59.

Held, that the servant of a manufacturer or vendor, under Bengal Act VII of 1878, is not liable under section 59 of the Act to the penalty provided by that section for the commission

of an act in breach of any of the conditions of the license of such manufacturer or vendor not otherwise provided for in the Act.

(1) *The Empress vs. Nuddiar Chand Shah*, I. L. R. 6 Cal. 832; (2) In the matter of *Nomullu Akund*, 11 C. L. R., 416, approved; (3) *Ishur Chander Shaha* (1873), 19 W. R. Cr., 34, distinguished, and *Empress vs. Baney Madhub Shaw*, I. L. R., 8 Cal., 207, overruled.

[29 Cal. page 724.]

(D.) **GOURHARI GOPE vs. ALAY GOPINI.**

Immoveable property—Possession—Order by Subordinate Magistrate restoring—Appeal—Jurisdiction—Magistrate of first class specially empowered to hear appeals—Consequential or incidental order—Criminal Procedure Code (Act V of 1898), sections 423, clause (d) and 522, and (Act X of 1882), section 423.

Held, that, under section 424, clause (d) of the Criminal Procedure Code of 1898, a Magistrate of the first class specially empowered to hear appeals from Subordinate Magistrates has jurisdiction to hear an appeal with reference to an order passed by a Subordinate Magistrate under section 522 of that Code: *Ram Chandra Mistry vs. Nobin Mirdha*, I. L. R., 25 Cal., 630, declared obsolete.

[29 Cal. page 779.]

(E.) **KALAI HALDAR vs. EMPEROR.**

Security for good behaviour from habitual offenders—Thief—Habitual thieves and dacoits—Desperate and dangerous characters—Evidence—Specific acts—General repute—Criminal Procedure Code (Act V of 1898), sections 110 and 117.

A charge under clause (f), section 110 of the Criminal Procedure Code, cannot be proved by general reputation, but by definite evidence. To prove a charge under section 110 that a person is by habit a thief and a dacoit, or that he is so desperate and dangerous as to render his being at large without security hazardous to the community, there should be proof of specific acts showing that he, to the knowledge of some particular individual, is a dangerous or desperate character. It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character when they themselves have no personal knowledge of, or acquaintance with, him. Such evidence is not only such as could not be safely acted upon, but is also likely to work serious prejudice.

[29 Cal. page 782.]

(A.) JAMIRUDDI MASAILI vs.
EMPEROR.

Misdirection—Charge to Jury—Duty of Judge—Evidence of approver—Corroboration—Retrial—Criminal Procedure Code (Act V of 1898), sections 297, 298 and 337.

A Sessions Judge in laying the evidence of an approver before the jury, stated in his charge: "If you think that the approver's story is worthy of credit in itself, you have to consider whether it has been corroborated on material points," and then, after describing what in his opinion were "the points of corroboration," told the jury that "the above are the points on which the evidence has been corroborated, and that corroboration is full and complete, if you believe it. You have to consider these points and decide, whether the approver has been corroborated in material points, and, if you find that to be so, then you have in his story sufficient evidence to connect all three accused with the crime."

Held, that this was not a proper way to place the case before the jury. The Sessions Judge should have told the jury that, although the law permitted them to convict on the uncorroborated evidence of an accomplice, it was not the practice of our Courts, which have consistently held that it was not safe or proper to convict on such evidence without some corroboration sufficient to connect each of the accused with the offence committed. With this caution the Sessions Judge should have laid before the jury the evidence corroborating the statement of the accomplice. The nature of the corroborative evidence must be confirmatory of some of the leading circumstances of the story of the approver as against the particular prisoner. Circumstances, under which a new trial should or should not be ordered on account of a defective summing up with reference to the weight of evidence, pointed out: *Elalice Buksh*, 5 W. R. Cr., 80, *Queen vs. Nawab Jan*, 8 W. R. Cr., 19, *The Queen vs. Kalla Chand Doss*, 11 W. R. Cr., 21, and *Palavasam, Weir* 535, referred to.

[29 Cal. page 885.]

(B.) ISHAN CHUNDER DASS vs.
GARTH AND ANOTHER.

Jurisdiction—Report by police officer of one district—Proceedings instituted by Magistrate of another district—Code of Criminal Procedure (Act V of 1898), section 145.

The Magistrate of one district has jurisdiction to institute proceedings under section 145 of the Code of Criminal Procedure on a report drawn up by a police officer of another district in respect of such portions of the land or water mentioned in the report as lies within his jurisdiction.

[30 Cal. page 98.]

(C.) BAIDYA NATH MAJUMDAR
vs. NIBARAN CHANDER GOPE.

Security for keeping the peace on conviction, order for—Offences not within the terms of section 106 of the Code of Criminal Procedure (Act V of 1898)—Duty of Magistrate to record findings of fact, which make that section applicable.

Where the offences of which a person is convicted do not in themselves and apart from any other incidents, come within the terms of section 106 of the Criminal Procedure Code, it is incumbent upon the Magistrate to record a clear finding with respect to the facts which, in his opinion, make the provisions of that section applicable: *Jib Lal Gir vs. Jaggmohan Gir*, 1. L. R., 26 Cal., 576, followed.

[30 Cal. page 95.]

(D.) BAISTAB CHARAN SHAHA vs.
EMPEROR.

Wrongful confinement—Prisoner in jail—Confinement, illegal, in cell—Penal Code (Act XLV of 1860), sections 79, 114 and 342.

If a prisoner is confined in a particular part of a prison without legal authority, that confinement is a wrongful one, notwithstanding that his confinement in the prison at large may be legal.

[30 Cal. page 97.]

(E.) BIRBAL KHALIFA vs.
EMPEROR.

Assault to deter public servant from discharge of his duty—Right of private defence—Rule in Police Code, effect of—Penal Code (Act XLV of 1860), sections 99, 351 and 353.

A rule in the Police Code to the effect that when any surveillé is at home, proof of his presence can be secured by taking a thumb-impression on the report, does not impose any obligation on the surveillé to give the thumb-impression, and he cannot be forced to do so.

Before an act can amount to an assault under section 351 of the Penal Code, it is necessary that a gesture or preparation should be made by a person which would cause another to apprehend that the person was about to use criminal force to him then and there. A preparation taken with words which would cause him to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault.

Where a *surveill  * on a domiciliary visit being paid to him by a police officer, refuses to allow his thumb-impression to be taken, and, on the officer attempting to take it, produced a *lathi*, saying, he would not allow the impression to be taken, and, if any one asked for it, he would break his head.

Held, that the act of the *surveill  * did not amount to an assault and that his conviction under section 333 of the Penal Code should be set aside.

Held, further, that if his act had in itself amounted to an offence, section 99 of the Penal Code would apply.

[30 Cal. page 101.]

(A.) ABDUL WAHED *vs.* AMIRAN BIBI.

Order for security for keeping the peace on conviction—Appeal—Appellate Court, power of, to set aside such order—Criminal Procedure Code (Act V of 1898), sections 106 and 423, clause (d).

An order in appeal setting aside an order of the first Court made under section 106 of the Code of Criminal Procedure is an incidental order within the meaning of section 423, clause (d) of the Code and can be made by an Appellate Court.

[30 Cal. page 107.]

(B.) SHAMSUDDIN SIRKAR *vs.* EMPEROR.

Bail-bond—Guarantee by surety for appearance of accused before a certain Magistrate—Non-appearance of accused before different Magistrate—Bond, forfeiture of—Criminal Procedure Code (Act V of 1898), section 514.

Where a surety executed a bail-bond guaranteeing that the person for whom he stood surety would appear at the Court of a Deputy Magistrate before whom the case was pending, and the accused failed to appear before the District Magistrate, to whose file the case had been transferred.

Held, that there had been no breach of the conditions of the bail-bond, and that the order forfeiting it under section 514 of the Criminal Procedure Code should be set aside.

[30 Cal. page 110.]

(C.) RAMZAN ALI *vs.* JANAR-DHAN SING.

Jurisdiction—Attachment of "crops" cut and stored—"Crops or other produce of land," meaning of—Criminal Procedure Code (Act V of 1898), sections 145 and 146.

The words "crops or other produce of land" in sub-section (2) of section 145 of the Criminal Procedure Code mean crops or other produce of land attached to the land. A Magistrate, therefore, has no jurisdiction under section 146

of the Code to attach crops, which have been severed from the land and stored.

[30 Cal. page 112.]

(D.) MANINDRA CHANDRA NANJIA *vs.* BARADA KANTA CHOWDHRY.

Jurisdiction—Criminal Procedure Code (Act V of 1898), section 145—Magistrate, power of, to stay proceedings and cancel order passed by him under section (1)—Revision—High Court, interference by.

A Magistrate has jurisdiction to cancel an order passed under sub-section (1) of section 145 of the Criminal Procedure Code and to stay proceedings if he becomes satisfied, whatever the source of information may be, that the state of things does not exist, which alone would give jurisdiction to proceed with the inquiry. Where, therefore, a Magistrate, having instituted proceedings and passed an order under sub-section (1) of section 145 received information, which he believed, that there no longer existed a dispute likely to cause a breach of the peace, and before any written statement had been filed by either side, cancelled his order and stayed the proceedings.

Held, that the High Court could not interfere, as the Magistrate had not acted without jurisdiction.

(1) Tarini Charan Chowdhry *vs.* Amulya Ratan Roy, I. L. R. 20 Cal. (867), referred to: (2) Harbullaah Narain Sing *vs.* Lachmeswar Prasad Sing, I. L. R. 26, Cal. 188, distinguished.

[30 Cal. page 121.]

(E.) DAULAT SING *vs.* BRINDA BELLER.

Process—Process to compel attendance of witness, issue of—Refusal to compel attendance of such witness—Magistrate, discretionary power of—Summons case—Criminal Procedure Code (Act V of 1898), section 244.

There is no discretionary power given in summons cases to a Magistrate by section 244 of the Criminal Procedure Code to refuse to compel the attendance of a witness, upon whom the Court has already issued process.

[30 Cal. page 285.]

(F.) KAILAS KURMI *vs.* EMPEROR.

Public servant—obstruction—Distrain—Crops—Sanction—Unlawful assembly—Bengal Tenancy Act (VIII of 1885), sections 123 and 126—Criminal Procedure Code (Act V of 1898), sections 4 and 195—Penal Code (Act XLV of 1860), sections 143 and 186.

A peon was ordered by the Civil Court under the provisions of the Bengal Tenancy

Act to cut certain crops which had already been distrained. The peon with some labourers cut a portion of the crops, when they were forcibly stopped by the petitioners and a mob of men. The peon lodged information of the occurrence at the thana.

The petitioners were convicted under sections 148 and 186 of the Penal Code.

Held, that, as there was in this case no complaint as defined by section 4 of the Criminal Procedure Code of the public servant concerned, the conviction under section 186 of the Penal Code should be set aside.

[30 Cal. page 288.]

(A.) YAKUB ALI *vs.* LETHU THAKUR.

Rioting, charge of—Conviction—Appeal—Acquittal—Conviction of house-trespass and hurt, legality of—Criminal Procedure Code (Act V of 1898), sections 282 and 428—Penal Code (Act XLV of 1860), sections 147, 323 and 448.

The accused were convicted of rioting. That was the only charge before the Magistrate. On appeal, the Sessions Judge acquitted them of rioting, but convicted them under sections 448 and 323 of the Penal Code of house-trespass and hurt.

Held, that the conviction by the Sessions Judge should be set aside, that the offences were distinct and separate offences, which should have formed the subject of separate charges, and that the accused had been prejudiced by the omission of those charges.

[30 Cal. page 366.]

(B.) ARUN SAMANTA *vs.* EMPEROR.

Security for good behaviour—Offences involving a breach of the peace—Meaning of—Immoral and indecent acts—Criminal Procedure Code (Act V of 1898), sections 106 and 110, clause (e).

The words "offences involving a breach of the peace" in section 110, clause (e) of the Criminal Procedure Code, mean offences in which a breach of the peace is an ingredient and not offences provoking or likely to lead to a breach of the peace.

Where a person who was found by the Magistrate to be addicted to acts of immorality in attempting to seduce women and behaving indecently and immodestly towards them, was bound over to give security for good behaviour under section 110, clause (e) of the Code.

Held, that the order for security should be set aside, as the offences were not such as involved a breach of the peace within the meaning of that clause.

[30 Cal. page 394.]

(C.) SADHU LALL *vs.* RAM CHURN PASI.

Sanction to prosecute—Appeal—Revocation of sanction by Joint Magistrate specially authorized to hear appeals, legality of—Jurisdiction—Subordinate Court—Criminal Procedure Code (Act V of 1898), sections 195 and 407.

Where a Joint Magistrate who had been authorized by the District Magistrate to hear appeals under section 407, clause (2) of the Criminal Procedure Code, on appeal revoked a sanction to prosecute granted under section 195 of the Code by an Assistant Magistrate exercising second-class powers:

Held, that the existence of the special power which was conferred on him by the District Magistrate did not constitute the Joint Magistrate the Court to which appeals ordinarily lay under section 195, clause (7), from a Magistrate exercising second-class powers, and that his order revoking the sanction should be set aside as having been made without jurisdiction.

[30 Cal. page 402.]

(D.) BISHWANATH DASS *vs.* KESHUB GANDHABANIK.

Defamation—Charge—Publication—Malice, omission to apologise, no proof of—Penal Code (Act XLV of 1860), sections 499 and 500—Criminal Procedure Code (Act V of 1898), section 222.

When an accused person was convicted of defamation under section 500 of the Penal Code upon a charge which set out that the defamation was committed on or about the 12th day of April, and afterwards, by describing the complainant as a Brithial Bania:

Held, that the charge was not a proper charge, inasmuch as it did not set forth the particular occasions on which defamation was said to have been committed, so as to give the accused person an opportunity of defending himself with reference to each act alleged to have been committed by him. Where the accused who was the collecting *panchait* of his village, was alleged to have defamed the complainant by giving a *chaukhatri* receipt to him, in which he was described by the designation of Brithial Bania;

Held, that the delivery of such a receipt was not a publication such as would render the accused liable to punishment for defamation, nor could the omission of the accused to apologise to the complainant subsequently, for the use of the caste designation, be taken as indicating that he used it at the time with a malicious intention.

[30 Cal. page 415.]

(A.) JAGOBUNDHOO KARMA-
KAR vs. EMPEROR.

Complaint—Petition to Collector against subordinate officer of Court of Wards—Dismissal of petition—Witnesses, opportunity to call—Sanction to prosecute—False charge—Penal Code (Act XLV of 1860), section 219—Code of Criminal Procedure (Act V of 1898), sections 4 (b) and 195.

A petition to the Collector as the superior officer of the Court of Wards directed against one of his official inferiors, a subordinate officer of the Court of Wards *Cutchery*, asking the Collector, as the head of the department, to redress the grievances of the petitioner, is not a complaint within section 4, clause (b) of the Code of Criminal Procedure. Where, on such a petition being presented, the Collector saw the petitioner and got him to repeat the statement made in the petition on oath and dealing with it judicially as if it were a complaint dismissed it, without giving the petitioner an opportunity of calling his witnesses, and ordered his prosecution under section 211 of the Penal Code:

Held, that the order for the prosecution of the petitioner under section 211 of the Penal Code, should be set aside, as the Collector was not justified in arbitrarily turning a departmental complaint into a criminal complaint, and that if he had been justified in taking the course that he did, he should have given the petitioner an opportunity of calling his witnesses and proving his allegations.

[30 Cal. page 418.]

(B.) JOWAHIR PATTAK vs
PARBHOO AHIR.

Criminal intimidation—Threat to ruin another by cases—"Injury"—Penal Code (Act XLV of 1860), sections 44, 502 and 506.

In order to convict a person of criminal intimidation under section 506 of the Penal Code, it must be found that there was a threat by him to another person of injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested. Where the petitioner who threatened to ruin the complainant by cases was convicted of criminal intimidation under section 506 of the Penal Code:

Held, that the conviction could not stand. Had the threat been to ruin the complainant by false cases, the offence of criminal intimi-

dation would have been committed; but as the threat was to ruin him by cases, it could not be assumed that by cases were meant false cases. If the cases were not false, the mere fact that they were instituted for the purpose of persecuting the complainant would not bring them within the definition of the term "injury."

[30 Cal. page 421.]

(C.) OHUNDRA COOMAR BISWAS vs.
CALCUTTA CORPORATION.

Calcutta Municipal Act (Bengal III of 1899), sections 502 and 505—Human food, destruction of articles for purchase of damaged rice intending to sell it as for pigs—Order for its destruction—Circumstances necessary to justify such order.

In order to justify an order under section 505 of the Calcutta Municipal Act of 1899, the Magistrate must be satisfied, and there must be a finding in his judgment that the article directed to be destroyed comes within section 502 of the Act, and is either exposed or hawked about for sale, or deposited in, or brought to, any place for the purpose of sale, or preparation for sale, and is intended for human food. Where certain damaged rice which had been purchased by a person who intended to sell it as food for pigs, was ordered to be destroyed by a Magistrate under section 505 of the Calcutta Municipal Act, and the judgment of the Magistrate contained no finding that the rice was brought for the purpose of sale, or that it was intended for human food, but contained a finding that there always was a risk that it might be sold for human consumption to poorer classes, or might be used in a flour-mill worked by unscrupulous persons:

Held, that the fact that this danger existed did not justify the order, and that until some attempt was made to sell the rice for consumption by the poorer classes, the Corporation was not justified in destroying the property of a man who was disposing of it in a way which was perfectly legitimate.

[30 Cal. page 443.]

(D.) SUKRU DOSADH vs. RAM
PERGASH SINGH.

Jurisdiction—Criminal Procedure Code (Act V of 1898), sections 107 and 145—Proceedings under section 145 of the Code, initiation of—Security for keeping the peace.

The making of a formal order under sub-section (1) of section 145 of the Criminal Procedure Code is absolutely necessary to give the Magistrate jurisdiction to initiate proceedings under that section. Where a notice was issued on the parties under section 107 of the Criminal Procedure Code to show cause why they should not execute a bond to keep the

peace, and the Magistrate at the hearing recorded an order wherein he stated that it appeared to him that, on the facts, the case was one for the application of section 145 of the Code and not of section 107, and he then proceeded to "bind down" the first party under sub-section (6) of section 145:

Held, that the expression "bind down" was not correct, and that the order was entirely bad.

[30 Cal. page 449.]

(A.) RADHABULLAV ROY vs. BENODE BEHARI CHATTERJEE.

Jurisdiction—Transfer of Criminal case to Subordinate Magistrate—District Magistrate, power of, to pass order relating to case not on his own file—Criminal Procedure Code (Act V of 1898), sections 190, 192 and 435.

When a case is once made over for disposal to a Subordinate Magistrate by the District Magistrate, the latter is not competent to pass any order relating to it other than an order such as might be made by him under Chapter XXXII of the Code of Criminal Procedure. *Moul Sing vs. Mahabir Sing*, 4 C. W. N., 242, and *Golapdy Sheikh vs. Queen-Empress*, I. L. R., 27 Cal., 979, referred to.

[21 ALL. page 106.]

(B.) QUEEN-EMPRESS vs. BABU LAL.

Criminal Procedure Code, section 285—Assessors—Effect of incapacity of assessors to understand the proceedings.

Three assessors were chosen to assist the Court at a trial. Before the case commenced it was discovered that one of the assessors was deaf, and his presence was accordingly dispensed with. The trial proceeded with two assessors present: but after the Public Prosecutor had closed his case, it was discovered that one of the remaining assessors was so deaf as to be incapable of understanding the proceedings. Under these circumstances it was *held*, that the trial having been held with practically only one assessor, the proceedings ought to be set aside and a new trial ordered.

[21 All. page 107.]

(C.) QUEEN-EMPRESS vs. MUTA-SADDI LAL.

Criminal Procedure Code, sections 110, 119—Security for good behaviour—Power to order further inquiry—"Accused person"—Criminal Procedure Code, section 437.

Held, that a person against whom proceedings under Chapter VIII of the Code of Criminal Procedure are being taken is "an

accused person" within the meaning of section 407 of the Code: *Queen-Empress vs. Mona Puna*, I. L. R., 16 Bom., 661, and *Joiha Singh vs. Queen-Empress*, 23 Cal., 493, followed.

[21 All. page 109.]

(D.) QUEEN-EMPRESS vs. ABDUL RAZZAK KHAN.

Criminal Procedure Code, sections 190, 191—Cognizance taken by a Magistrate under section 190, sub-section 1, clause (c)—Jurisdiction of Magistrate to hold a preliminary inquiry not thereby ousted.

Held, that the fact of a Magistrate having taken cognizance of a case under section 190, sub-section 1, clause (c) of the Code of Criminal Procedure, does not disqualify such Magistrate from holding a preliminary inquiry and committing the case to the Court of Session.

[21 All. page 111.]

(E.) QUEEN-EMPRESS vs. JECHIL.

Criminal Procedure Code, section 288—Evidence—Use in Sessions Court of evidence taken before the Committing Magistrate.

Although under certain circumstances a Court of Session may use evidence given before the Committing Magistrate as if it had been given before itself, it is not proper for a Court of Session to base a conviction solely upon such evidence, there being no other evidence on the record to corroborate it. *The Queen vs. Amanulla*, 12 B. L. R., 15; *Queen-Empress vs. Bharmappa*, 12 Mad., 123, and *Queen-Empress vs. Dhan Sahai*, 7 All., 862, referred to.

[21 All. page 113.]

(F.) QUEEN-EMPRESS vs. MUHAMMAD SAEED KHAN.

Act 1860 (XLV), Indian Penal Code, section 493 *et seq*—Forgery—Meaning of the term "fraud" discussed.

A Police head-constable's character and service-roll in his custody was found to have been tampered with in this way, that a page, apparently containing remarks unfavourable to the head-constable, had been taken out, and a new page with favourable remarks, purporting to have been written and signed by various superior officers of Police, had been inserted in its place, the intent being to favour the chances of the promotion of the said head-constable.

Held, that this interpolation amounted to forgery within the meaning of section 463 of

the Indian Penal Code, but, that, inasmuch as it was not proved that the head-constable himself prepared and inserted the false page in his character-roll, he was rightly convicted of abetment only: *Queen-Empress vs. Shoshi Bhushan*, I. L. R., 15 All., 210; *Queen-Empress vs. Vithal Narain*, 18 Bom., 515, and *Lalit Mohan Sarkar vs. The Queen-Empress*, 22 Cal., 313, referred to.

[21 All. page 123.]

(A.) *QUEEN-EMPRESS vs. TIMMAL.*

Act, 1872—I (Indian Evidence Act), section 105—Act No. XLV of 1860, sections 96 et seq.—Right of private defence—Presumption—Pleadings.

Held, that an accused person who at his trial has not pleaded the right of private defence, but has raised other pleas inconsistent with such a defence, cannot in appeal set up a case, founded upon the evidence taken at his trial that he acted in the exercise of the right of private defence; neither is the Court competent to raise such a plea on behalf of the appellant: *Queen-Empress vs. Prag Dat*, I. L. R., 20 All., 459, referred to.

[21 All. page 127.]

(B.) *QUEEN-EMPRESS vs. MATHURA PRASAD.*

Act, 1860—XLV (Indian Penal Code), sections 21, 161—"Public servant"—Manager employed under the Court of Wards.

Held, that the manager of an estate employed under the Court of Wards is a "public servant" within the meaning of section 21 of the Indian Penal Code: *Queen-Empress vs. Arayi*, I. L. R., 7 Mad., 17, referred to.

[21 All. page 159.]

(C.) *QUEEN-EMPRESS vs. ZAKIR HUSAIN.*

Act, 1860—XLV (Indian Penal Code), sections 192 and 193—Fabricating false evidence—False entry made by a Police officer in a special diary.

Held, that a Police officer who made a false entry in the special diary relating to a case which was being investigated by him could not be convicted therefor of the offence of fabricating false evidence as defined in section 192 of the Indian Penal Code, inasmuch as the document in which the alleged false entry was made was not one which was admissible in evidence: *Empress vs. Gauri Shankar*, I. L. R., 6 All., 42, and *Keilasumputter*, 6 Mad. S. C. R., 373, referred to.

[21 All. page 175.]

(D.) *QUEEN-EMPRESS vs. SONEJU.*

Criminal Procedure Code, section 288—Admissibility of evidence—Statement of approver made before Committing Magistrate and afterwards retracted in the Court of Session.

Pardon was tendered by a Magistrate to one of several persons who were being tried before him for dacoity. The pardon was accepted, and the person to whom it was tendered made a statement as a witness before the Magistrate. The case having been committed to the Court of Session the approver in that Court totally repudiated his statement made before the Magistrate.

Held, that this repudiation did not prevent the Sessions Court from considering the evidence of the approver under the provisions of section 288 of the Code of Criminal Procedure.

[21 All. page 177.]

(E.) *QUEEN-EMPRESS vs. LALIT TIWARI.*

Rules of Court of the 18th January, 1898, Rule 83—Finality of judgment or order of the High Court—Judgment or order not complete until sealed.

Held, that a judgment or order of the High Court is not complete until it is sealed in accordance with Rule 83 of the Rules of Court of the 18th January, 1898, and up to that time may be altered by the Judge or Judges concerned therewith without any formal procedure by way of review of judgment being taken.

[21 All. page 189.]

(F.) *QUEEN-EMPRESS vs. MUKUNDI LAL.*

Criminal Procedure Code, section 363—Summary trial—Matters necessary to be stated in the record of a summary trial.

Where a Magistrate invested with powers under section 260 of the Code of Criminal Procedure is trying a case summarily, it is desirable that he should set out under the column reserved for that purpose so much of the reasons that have influenced him as to satisfy the accused that the Magistrate has considered each of the ingredients necessary in

law for the conviction to which the Magistrate has proceeded, and that while this should be recorded with brevity, the brevity should not be such as to tend to obscurity.

The record of a summary trial contained in the column corresponding to clause (h) of section 263 of the Code of Criminal Procedure, the following entry: "The Police made a raid on information received and caught all the accused gambling. The defence of Mukundi, Mannu, Kali Charan, Ballan and Gulzari Lal involves the absurdity that the Police obtained a warrant to raid a house in which they could have no reason to suppose they would find any one."

"I convict Mukundi of keeping a common gaming-house, -section 4, Gambling Act I, convict the other six defendants of gaming in a common gaming-house, -section 3, Gambling Act."

Held, that this entry, though it should have been more explicit, was a sufficient compliance with the requirements of the law.

[21 All. page 263.]

(A.) *QUEEN-EMPRESS vs. MAHABIR TIWARI.*

Act, 1860—XLV (Indian Penal Code), sections 397, 34—Dacoity—Commission of grievous hurt in the course of a dacoity—Person liable under section 34, liable also under section 397.

Held, that the words "such offender," in section 397 of the Indian Penal Code, include any person taking part in the dacoity who, though he may not himself have struck the blow causing the grievous hurt, is nevertheless liable for the act by reason of section 34 of the Code.

[21 All. page 265.]

(B.) *In re THE PETITION OF KALYAN SINGH.*

Criminal Procedure Code, section 253—Discharge—Evidence—Duty of Magistrate in dealing with the evidence produced in a case triable by a Court of Session.

Held, that a Magistrate inquiring into a case triable by the Court of Session is not bound to commit simply because the evidence for the prosecution, if believed, discloses a case against the accused, but he is competent to consider the reliability of such evidence and to discharge the accused if he find it untrustworthy.

[21 All. page 891.]

(C.) *QUEEN-EMPRESS vs. HORL.*

Act, 1897—VIII (Reformatory Schools Act), section 16—Rules of the Local Government framed under section 8.(3) of the Act—Order sending a boy of the Dalera caste to a reformatory school—Jurisdiction of High Courts to interfere with orders under section 16—Interpretation of statutes.

Held, that the High Court has power to interfere in appeal or revision with an order for detention in a reformatory school passed in substitution for transportation or imprisonment when such order is made without jurisdiction, and is not an order warranted by Act No. VIII of 1897.

Section 16 of Act No. VIII of 1897 only precludes the interference of a superior Court with the original Court's order so far as it (1) determines the age of a youthful offender, or (2) directs the substitution of detention in a reformatory school for transportation or imprisonment, where such substitution is not made without jurisdiction or is not otherwise illegal, having regard to the provisions of the Act: *Queen-Empress vs. Himai*, 1 L. R., 20 All., 158, and *Queen-Empress vs. Gobinda*, 1 L. R. 20, All. 159, overruled; *Queen-Empress vs. Billar*, 1 L. R., 20 All., 160; *Queen-Empress vs. Kaidya Husain, Bom.*, L. R., 162; *Deputy Legal Remembrancer vs. Ahmad Ali*, 1 L. R., 25 Cal., 383; *Queen-Empress vs. Ramalingam*, 1 L. R., 21 All., 420; *Koop Lall Das vs. Manook*, 2 Cal. W. N., 572; *Queen-Empress vs. Partab Chunder Ghose*, 1 L. R., 25 Cal., 852; (1878) L. R., 33 B. D., 509; (1874) L. R., 5 Penal Code, 417; (1881) L. R., 6 App. 122. *Ex parte Bradlaugh and The Colonial Bank of Australasia vs. Willan* referred to.

In interpreting statutes the more liberal construction ought not to prevail if it is opposed to the intention of the Legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated: *Caledonian Railway Company vs. North British Railway Company* referred to.

[22 All. page 49.]

(D.) *In re RAJENDRO NATH MUKERJI.*

Letters Patent, 1866, para. 8—Removal of a vakil from the roll for reasonable cause—A conviction under section 471 of the Indian Penal Code.

A vakil of the High Court was convicted, under section 471 of the Indian Penal Code, of fraudulently using as genuine a document

which he knew to be forged. This was affirmed on appeal, when the punishment to which he had been sentenced was reduced to two years.

The High Court, while not allowing the propriety of the conviction and sentence to be questioned, had considered whether his culpability was such as to disqualify him for his profession, and had decided in the affirmative, removing him from the roll, under para. 8 of the Letters-Patent, 1866.

Held, that, in the present case, the conviction, followed by the sentence, was sufficient, without further inquiry, to justify the High Court in making that order. The appellant could not be allowed to have an indirect appeal against the judgment of the Sessions Judge confirmed by the High Court. The judgment of Lord Mansfield in *ex parte Brownhill* referred to as well explaining the disqualification of a member of the legal profession that attends such a conviction and sentence.

In re Wear where the Court of Appeal looked to see what was the nature of the offence, and would not, as a matter of course, strike a solicitor off the roll because he had been convicted, distinguished from the present case.

In re Durga Charan dealt with under section 12 of Act XVIII of 1879, referred to as a case where the nature of the offence admitted of further inquiry and also distinguished.

In regard to the finality of the judgment of the High Court in deciding the appeal from the conviction and sentence, *In re the petition of Macrea* was referred to.

[22 All. page 106.]

(A.) QUEEN-EMPRESS vs. ADAM KHAN.

Criminal Procedure Code, section 203—
Procedure—Complaint—Dismissal of
complaint—Subsequent complaint arising
out of the same matter.

When a competent tribunal has dismissed a complaint another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it: *Niratan Sen vs. Jogesh Chandra Bhattacharjee* and *Komal Chandra Pal vs. Gourchand Audbhikari* followed; *Queen-Empress vs. Puran and Queen-Empress vs. Umedan* referred to.

[23 All. page 113.]

(B.) QUEEN-EMPRESS vs. NANNI.

Act XLV of 1860, Indian Penal Code, sections 265, 290 Public nuisance—
Soliciting for purposes of prostitution.

Held, that the soliciting for purposes of prostitution of passers-by on a public road is not a public nuisance, as that term is defined in section 265 of the Indian Penal Code.

[22 All. page 115.]

(C.) QUEEN EMPRESS vs. KHEM.

Act, 1860—XLV (Indian Penal Code),
section 193—Criminal Procedure Code,
section 164—False evidence—Statement
made in the course of a "Judicial pro-
ceeding"—Statements made before a
Magistrate under section 164.

Held, that where a witness had made one statement on oath or solemn affirmation before a third class Magistrate under section 164 of the Code of Criminal Procedure, and again another and totally inconsistent statement at the trial of the case before a Magistrate of the first class, he might properly be convicted under the second—if not under the first—paragraph of section 193 of the Indian Penal Code: *Queen-Empress vs. Bharna* considered and distinguished.

[22 All. page 118.]

(D.) QUEEN-EMPRESS vs. GANGA DIN.

Act, 1878—XI (Indian Arms Act), sections
19, 27—Exemptions from provisions of
Arms Act—Government Notification No.
518 of the 6th March, 1879—Govern-
ment Notification No. 458 of the 18th
March, 1898—"Personal use of Arms—
Arms carried and used by servant of
exempted person.

By a notification under section 27 of the Arms Act (Act No. XI of 1879) issued by the Government of India, certain persons, amongst them Rajas and Members of the Legislative Council of the Lieutenant-Governor of the N.-W. P., were exempted from the operation of sections 13 and 16 of the said Act; but with this proviso, that, "except where otherwise expressly stated, the arms or ammunition carried or possessed by such persons shall be for their own personal use, etc., etc."

Held, that the terms of this proviso would allow of a person exempted under the notification above alluded to, sending a servant armed with a gun into a neighbouring district to shoot birds for him, and that a gun so carried and used by the servant of the exempted person was in the "personal use" of the exempted person within the meaning of the notification.

[22 All. page 214.]

(E.) BARKAT-UN-NISSA vs. ABDUL AZIZ.

Civil Procedure Code, section 505—Criminal
Procedure Code, section 145—Order of
Magistrate for maintenance of possession
no bar to the appointment of a receiver
by a Civil Court.

The fact that there exists in respect of any immovable property an order of a Magistrate

passed under section 145 of the Code of Criminal Procedure is no bar to the exercise by a Civil Court of the power conferred on it by section 505 of the Code of Civil Procedure of appointing a receiver in respect of the same property.

[22 All. page 216.]

(A.) ABDULLAH vs. JITU.

Criminal Procedure Code, sections 87, 88, 89—Absconding offender—Proclamation and attachment—Sale of attached property—Title of purchaser.

Where property was attached and sold as property of a proclaimed offender under sections 87 and 88 of the Code of Criminal Procedure, it was held that, although the proclamation was irregular, yet the property having vested in third parties, strangers to the proceedings in which the proclamation was made, the sale could not be set aside.

[22 All. page 234.]

(B.) ISURI PRASAD SINGH vs. UMRAO SINGH.

Act, 1860—XLV (Indian Penal Code), section 499—Defamation—Statement made by an accused person in an application to a Court—Statement made in good faith for the protection of the interests of the person making it.

In an application for the transfer of a criminal case the applicants alleged, with some apparent reason, that the case had been falsely got up against them by the complainant at the instigation of one Umrao Singh in order to prejudice them in their defence in a civil suit which Umrao Singh had caused to be brought against them.

Held, that this statement did not amount to defamation—not because of the application of any principles of English law, for such principles did not apply to prosecutions for defamation under the Indian Penal Code—but because the statement fell within the ninth exception to section 499 of the Indian Penal Code: *Queen-Empress vs. Balkrishna Vithal* (I. L. R., 17 Bom., 573) *in re Nagarji Trikami* (I. L. R., 19 Bom., 340); *Queen vs. Pursoram Doss* (3 W. R. Cr. R., 45); *Greene vs. Delaney* (14 W. R., Cr. R., 27) and *Abdul Hakim vs. Tej Chandur Mukarji* (I. L. R., 3 All., 815) referred to.

[22 All. page 267.]

(C.) LACHMAN, IN THE MATTER OF THE PETITION OF—

Criminal Procedure Code, sections 133, 135—Order of Magistrate for removal of unlawful obstruction—Application for appointment of a jury—Effect of verdict of jury.

Where a person against whom an order has been made under section 133 of the Code of

Criminal Procedure applies for a jury under section 135 of the Code, the applicant is bound by the verdict of the jury, and cannot afterwards raise such a plea as that the obstruction was caused in the exercise of a *bond fide* claim of right.

[22 All. page 323.]

(D.) QUEEN-EMPRESS vs. SAMUEL LUKE.

Act, 1878—XI (Indian Arms Act), section 19 (f)—Notification No. 458 of the 18th March, 1898—Exemptions from the operation of the Arms Act—Volunteers.

A volunteer, being a person exempted in virtue of Notification No. 458, dated 18th March, 1898, of the Government of India, is not exempted merely with reference to his duties as a volunteer, but generally (subject to the exceptions mentioned in the said Notification). It is, therefore, not unlawful for a volunteer to possess fire-arms and to use the same.

[22 All. page 346.]

(E.) QUEEN-EMPRESS vs. NARAIN SINGH.

Criminal Procedure Code, section 556—Act No. V of 1881 (Police Act), section 29—Trial by District Magistrate for breach of orders of a Reserve Inspector of Police—Magistrate not “personally interested.”

Held, that the Magistrate of a district was not, on account of his being the head of the police of the district, debarred by reason of section 556 of the Code of Criminal Procedure from trying a person accused under section 29 of the Police Act, 1881, of a breach of the orders of a Reserve Inspector of Police.

[22 All. page 445.]

(F.) QUEEN-EMPRESS vs. NIRMAL DAS.

Contract Act IX of 1872, section 288—Previous statement to Committing Magistrate retracted in Sessions Court—Use of such statement by Sessions Court as substantive evidence—Act No. I of 1872 (Indian Evidence Act), section 30—Confession of co-accused—“Taking into consideration”—Finding of arms and stolen property in joint family house—Evidence—Act No. XLV of 1860 (Indian Penal Code), section 412.

Where a witness who has made a statement before the Committing Magistrate subsequently resiles from that statement in the Court of Session, the statement made before the Committing Magistrate can be used under section

188 of the Code of Criminal Procedure to contradict the witness; but the use of such statement as substantial evidence of the facts alleged by the witness on the prior occasion is fraught with the gravest peril, and could never have been the intention of the Legislature.

The words "take into consideration" in section 30 of the Indian Evidence Act, 1872, do not mean that the confession referred to in the section is to have the force of sworn evidence: *Queen-Empress vs. Khandia* (I. L. R., 15 Bom. 66) referred to.

Held, the bare finding of stolen property and arms in the house of a joint Hindu family is not such evidence of possession on the part of each of its members as would form a sufficient basis for a conviction.

[23 All. page 53]

(A.) *QUEEN-EMPRESS vs. PALTUA.*

Act, 1872—I (Indian Evidence Act), section 30—Confession—Joint trial—Plea of guilty by some of the accused—Plea not accepted in order that their confessions might be considered against accused.

Where several accused persons are being tried jointly for the same offence, and some of them plead guilty, it is unfair to defer convicting those who have pleaded guilty merely in order that their confessions may be considered against the other accused.

Queen-Empress vs. Pabuji (I. L. R., 19 Bom., 195; *Queen-Empress vs. Lakshmayya Pandaram* (22 Mad., 461); *Queen-Empress vs. Pirbhu* (17 All., 525), and *Queen-Empress vs. Chinna Pavu-chi* (23 Mad., 151) referred to.

[23 All. page 78.]

(B) *QUEEN-EMPRESS vs. BENI.*

Act XLV of 1860 (Indian Penal Code), sections 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction under what sections to be recorded.

Where several persons were found endeavouring to break into a house and some of them, being armed, used violence, but only in attempting to escape being arrested, it was *held*, that they could not properly be convicted under section 397 read with section 511 of the Indian Penal Code: *Queen vs. Koonce* (7 W. R. Cr. R., 48) referred to.

[23 All. page 80.]

(C.) *QUEEN-EMPRESS vs. RAZA ALI.*

Criminal Procedure Code, section 118—Security for good behaviour—Discretion of Court—Security demanded not to be excessive.

Where a Magistrate, acting under section 11 of the Code of Criminal Procedure, re-

quired securities to an amount which the person to be bound over was totally unable to furnish, in consequence of which he remained in jail for some two months and a half, the Court *held*, that the Magistrate had not exercised a proper discretion in the matter and reduced the amount of the security: *Queen-Empress vs. Rama* (I. L. R., 16 Bom., 372) followed.

[23 All. page 81.]

(D) *QUEEN-EMPRESS vs. MU. HAMMAU ALI.*

Act, 1860—XLV (Indian Penal Code), section 215—Theft—Receiving gratification to help the owner to recover stolen property—Section 215 not intended to apply to the actual thief.

Section 215 of the Indian Penal Code was not intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property without, at the same time, using all the means in his power to cause the thief to be apprehended and convicted of the offence.

[23 All. page 82.]

(E) *QUEEN-EMPRESS vs. KANGLA.*

Act XLV of 1860 (Indian Penal Code), section 457—House trespass by night with intent—Alleged intent theft—Proved intent adultery with complainant's wife—Evidence.

Where, on a charge under section 457 of the Indian Penal Code, it was proved to the satisfaction of the Court that the accused did enter the complainant's house in order to have sexual intercourse with a woman whom he knew was the wife of the complainant, and further, that he did so without the husband's consent, and the accused was convicted: it was *held*, that the conviction was proper. It was not necessary under the circumstances that the complainant should bring a specific charge of adultery: *Brijbasi vs. The Queen-Empress* (I. L. R., 19 All., 74) referred to.

[23 All. page 84.]

(F.) *QUEEN-EMPRESS vs. UMRAO LAL.*

Act XLV of 1860 (Indian Penal Code), sections 466, 471—Forgery—Using as genuine a forged document—Person convicted of and sentenced for the forgery not also to be sentenced for the use.

Held, that a person who, being himself the forger thereof, has used as genuine a forged

document, cannot be punished as well under section 471 of the Indian Penal Code for the use as under section 466 for the forgery.

[23 All. page 90.]

(A.) QUEEN-EMPRESS vs. RAM SEWAK.

Act, 1872—I (Indian Evidence Act), section 118—Evidence—Witness—Competency of witness of tender years.

In this case a Sessions Judge purposely refrained from examining a small boy, who must, under the circumstances, have been an eye-witness to a murder. On appeal the High Court observed:—"In our opinion the learned Judge, specially considering the importance of the witness, ought not to have refrained from examining him, unless, under the words of section 118 of the Indian Evidence Act, he considered that the boy was prevented from understanding the questions put to him, or from giving rational answers to those questions by reason of tender years."

[23 All page 124]

(B.) QUEEN-EMPRESS vs. BHOLU.

Act, 1860—XLV (Indian Penal Code), section 402—Assembling for the purpose of committing dacoity—Evidence.

Several persons were found at 11 o'clock at night on a road just outside the city of Agra, all carrying arms (guns and swords) concealed under their clothes. None of them had a license to carry arms, and none of them could give any reasonable explanation of his presence at the spot under the particular circumstances.

Held, that these persons were rightly convicted under section 402 of the Indian Penal Code of assembling together with intent to commit dacoity. The Deputy Legal Remembrancer vs. Karuna Baistobi, I L. R., 22 Cal., 164; Bahmakand Ram vs. Ghansam Ram, I L. R., 22 Cal., 391, and Queen-Emress vs. Papa Sani, I L. R., 23 Mad., 159, referred to.

[23 All. page 159.]

(C.) QUEEN-EMPRESS vs. KEDAR NATH.

Criminal Procedure Code, section 133—Nuisance—Encroachment upon unmetalled portion of a Government road.

Held, that any obstruction upon a public road is a nuisance within the meaning of section 133 of the Code of Criminal Procedure, whether in point of fact it causes practical inconvenience or not.

[23 All. page 246.]

(D) ALAMDAR HUSAIN, IN THE MATTER OF THE PETITION OF—

Criminal Procedure Code, sections 439, 476—Revision—Power of High Court to revise an order under section 476—Circumstances under which such power should or should not be exercised.

The High Court has power in revision to set aside an order passed by a Civil, Criminal or Revenue Court under section 476 of the Code of Criminal Procedure, but such power should not be exercised where the Court below has arrived at a judicial opinion on evidence that there is ground for inquiring into an offence referred to in section 195 merely because the High Court disagrees with that opinion.

[23 All. page 266.]

(E.) KING-EMPEROR vs. JOHRI. ✓

Act, 1860—XLV (Indian Penal Code), sections 224, 411—Escape from lawful custody—Actual thief arrested by private person whilst in possession of stolen property—Section 411 of the Indian Penal Code not applicable to the thief himself.

Section 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person whose bullock had been stolen in his absence traced it to the house of the thief, and there and then arrested him, and made him over to a chaukidar, from whose custody he escaped, it was held, that this was not an escape from lawful custody within the meaning of section 224 of the Code.

Semble that if the owner of the bullock had himself been entitled to make the arrest, the subsequent custody of the prisoner by the chaukidar would have been a lawful custody: Queen-Emress vs. Potadu, I L. R., 11 Mad., 480, referred to.

[23 All. page 306]

(F.) KING-EMPEROR vs. ALI HUSAIN.

Act, 1860—XLV (Indian Penal Code), section 380—Theft from a Railway van—Property found in an adjoining van, in which four railway coolies were travelling—Evidence.

On suspicion of theft certain articles from a running goods train, a van on the train in which four railway coolies were travelling, was searched. The property misappropriated

found, but, hidden under a heap of clothing belonging to the four coolies, were discovered 10 *thans* of cloth, which, on investigation, were ascertained to have been abstracted from the next van.

Held, that none of the four coolies travelling in the van where the 10 *thans* of stolen cloth were found could be convicted of the theft of the cloth in the absence of evidence to connect one or more of them individually with the possession of the cloth.

[23 All. page 420.]

(A.) KING-EMPEROR *vs.* MUHAMMAD HUSAIN.

Act, 1860—XLV (Indian Penal Code), section 232—Counterfeiting Queen's coin—Removing rings from coins used as ornaments and restoring the same to circulation.

It is not an offence under section 232 of the Indian Penal Code to remove the ring from a coin which has been used to form part of a necklace or other ornament, and to work up the face of the coin where the ring has been, it not being shown that any material part of the coin has at any time been removed.

[23 All. page 422.]

(B.) KING-EMPEROR *vs.* KARIM-UD-DIN BEG.

Criminal Procedure Code, sections 110, 123—Security for good behaviour—Term for which imprisonment in default of finding security should be ordered.

Although it is within the competence of a Sessions Judge, acting under section 123 (3) of the Code of Criminal Procedure, to direct that a person who has been ordered to give security shall, on failure to give security, be imprisoned for any term not exceeding three years, yet it is advisable that the term of imprisonment in default ordered under that section should always be the same as the period for which the security is directed to be given.

[23 All. page 497.]

(C.) KING-EMPEROR *vs.* SAGWA.

Act, 1860—XLV (Indian Penal Code), section 70—Criminal Procedure Code, section 423—Alteration of sentence in appeal—Enhancement.

A Magistrate on a conviction, under section 420 of the Indian Penal Code, sentenced the accused to six months' rigorous imprisonment. On appeal the Sessions Judge reduced the substantive term of imprisonment to four months,

but imposed a fine of one hundred rupees, or in default two months' further rigorous imprisonment.

Held, that, inasmuch as, even after the two months' imprisonment imposed in default of payment of the fine had been served, the fine could still be exacted, the latter sentence amounted to an enhancement of the former: *Queen vs. Modosoodun Day*, 3 W. R., Cr. R., 61; *Rakhal Raja vs. Kirode Pershad Dutt*, I. L. R., 27 Cal., 175, and *Empress vs. Meda*, Weekly Notes, 1887, p. 100, referred to; *Queen-Empress vs. Chagan Jagannath*, I. L. R., 23 Bom., 439, dissented from.

[24 All. page 143.]

(D.) KING-EMPEROR *vs.* KALIJI.

Act XLV of 1860 (Indian Penal Code), section 147—Riot—Private defence of property—Act No. XLV of 1860, Indian Penal Code, sections 96 et seq.—Deliberate aggression by party entitled to possession.

Party A sowed a crop in a field to the possession of which apparently they were entitled. Party B claiming the field and the crop as theirs, entered upon the land and began to cut the crop. Party A, having watched party B enter upon the land, took counsel together and then proceeded to attack party B, and a fight ensued in which grievous hurt was caused.

Held, that it was not open to party A to plead that they were acting in the exercise of their right of private defence of property: *Queen-Empress vs. Prag Dat*, I. L. R., 20 All., 459, followed; *Queen-Empress vs. Narsing Pathabhai*, I. L. R., 14 Bom., 441, distinguished; *Pachkauri vs. Queen-Empress*, I. L. R., 24 Cal., 686, not followed.

[24 All. page 148.]

(E.) KING-EMPEROR *vs.* FYAZ-UD-DIN.

Criminal Procedure Code, sections 110 et seq.; 437—Security for good behaviour—Power of District Magistrate to re-open proceeding on the same record after discharge of the person called upon to show cause by a Magistrate of the first class.

Held, that it is competent to the Magistrate of the district, in the case of a person who has been called upon under section 110 of the Code of Criminal Procedure, by a Magistrate of the first class, to show cause why he should not furnish security for good behaviour, and has been discharged by such Magistrate under section 119 of the Code, to institute fresh proceedings against such person upon the basis of the record that was before the first class Magistrate: *Queen-Empress vs. Mustasaddi Lal*, I. L. R., 21 All., 107; *Queen*;

Empress vs. Ratti, Weekly Notes, 1899, p. 306; *Queen-Empress vs. Ahmad Khan*, Weekly Notes, 1900, p. 306, and *Queen-Empress vs. Iman Mondal*, I. L. R., 27 Cal., 662, referred to.

[24 All. page 151.]

(A) KING-EMPEROR vs. MUNNA.

Criminal Procedure Code, sections 107 (2), 192—Security for keeping the peace—Transfer—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.

Held, that it was competent to a District Magistrate who had initiated proceedings under section 107 (2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction to transfer such proceedings at a later stage to a Magistrate subordinate to himself, though such Magistrate was not competent to initiate such proceedings.

[24 All. page 155.]

(B.) KING-EMPEROR vs. MOTI LAL.

Act XLV of 1860 (Indian Penal Code), sections 426, 298, 504—Mischief—Wilful pollution of food served at a caste dinner.

Certain Hindus, present at a caste dinner, had sat down to partake of the food which had been served to them, when certain other members of the caste came, and after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, on the ground as their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit to be eaten. On reference by the Sessions Judge it was *held*, that this conviction was wrong; neither could the accused be convicted under section 298 nor under section 504 of the Indian Penal Code on the facts found.

[24 All. page 254.]

(C.) EMPEROR vs. GULZARI LAL.

Act, 1860—XLV (Indian Penal Code), section 406—Criminal breach of trust—Charge—Criminal Procedure Code, sections 222, 234.

Where an accused person is charged with having misappropriated or committed criminal breach of trust in respect of an aggregate sum of money, the whole sum being alleged to have been wrongfully dealt with by the accused

within a period not exceeding one year, the mere fact that the items composing the such aggregate sum are specified, and may be more than three in number, will not render the charge obnoxious to the prohibition implied by section 234 of the Code of Criminal Procedure: *Subrahmanya Ayyar vs. King-Emperor*, I. L. R., 25 Mad., 61; S. C. 5 C. W. N., 866, distinguished.

[24 All. page 256.]

(D) EMPEROR vs. KALI CHARAN.

Criminal Procedure Code, section 188—Offence committed outside British India by a Native Indian subject of His Majesty—Certificate of Political Agent not obtained before making inquiry.

Where an inquiry into an offence to which section 188 of the Code of Criminal Procedure was applicable was commenced without the certificate provided for by that section having been obtained, it was *held*, that the proceedings were void, and that the subsequent commitment to the Court of Session must be quashed, notwithstanding that the necessary certificate was in fact granted some days before the commitment was made, though at the time of the commitment being made it had not come into the hands of the Committing Magistrate.

[24 All. page 298.]

(E.) EMPEROR vs. KADHU SINGH.

Act XLV 1860 (Indian Penal Code), 147—Riot—Act No XLV of 1860, sections 96 et seq—Right of private defence.

Of two parties, each of which claimed title to certain trees, one party went to cut down the trees, and went armed with *lathis*, apparently with the intention of resisting; anticipated opposition on the part of the other claimants. The other party attempted to stop the cutting down of the trees, and a fight ensued, in the course of which several people were injured.

Held, that the first party were guilty of rioting, and, whatever their title to the trees was, could not claim that they had acted in the exercise of the right of private defence.

[24 All. page 306.]

(F.) EMPEROR vs. BIRCH.

Criminal Procedure Code, section 562—First offender—Powers conferred by section 562 exercisable by a Court of Appeal—Criminal Procedure Code, section 523 (d).

Held, that the powers conferred by section 562 of the Code of Criminal Procedure apply to a Court by which a first offender is convicted.

are by virtue of section 423 (d) of the Code, exercisable by the High Court sitting as a Court of Appeal.

[24 All. page 309.]

(A.) **EMPEROR vs. WAZIR AHMAD.**

Act (Local)—1900-01 (Municipalities Act), section 147—Bye-laws of Municipality—Continuing breach—Recurring fine—Imposition of fine in advance

Held, that where, as in section 147 of Act No. I of 1900 (Local), it is directed that a breach of some law may be punished with a fine of certain sum per diem so long as the breach continues, it is not competent to the Court to impose such fine in advance whilst sentencing an offender in respect of the original breach; but there must be proof of the continuing breach having been committed: *Ram Krishna Biewas vs. Mohendro Nath Morumdar*, I. L. R., 27 Cal., 565, followed.

[24 All. page 346.]

(B.) *In re* **SHEIKH AMIN-UD-DIN.**

Criminal Procedure Code, sections 435, 438, 439—Practice—Revision Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.

In the case of an acquittal by a Subordinate Magistrate, where the Local Government does not appeal, or where the District Magistrate does not move the Local Government to appeal, the High Court will not, as a general rule, entertain a reference direct from the District Magistrate under section 438 of the Code of Criminal Procedure.

[24 All. page 348.]

(C.) **IN THE MATTER OF THE PETITION OF PADMA DAT JOSHI.**

Act 1879—XVIII (Legal Practitioners' Act), sections 6 and 8—Act No. XIV of 1874, sections 3, 5 and 6—Kumaun Rules, 27th July, 1894, rules 2 and 11—Jurisdiction of the High Court as regards enrolment of pleaders in the province of Kumaun and Garhwal.

For the purposes of the Legal Practitioners' Act, 1879, the Commissioner of Kumaun is the High Court for the Province of Kumaun and Garhwal. A vakil, therefore, whose name is entered in the High Court of Judicature for the North-Western Provinces is not by virtue of such enrolment, entitled to practise in the Courts of Kumaun and Garhwal, nor has the

High Court of Judicature for the North-Western Provinces any jurisdiction to reverse an order of the Commissioner of Kumaun refusing to enrol a vakil on the roll of legal practitioners entitled to practise in the Courts of Kumaun and Garhwal.

[24 All. page 443.]

(D.) **BEHARI LAL IN THE MATTER OF THE PETITION OF—**

Criminal Procedure Code, section 145—No decision come to by Magistrate as to party in possession—Application for revision at instance of party who could not in his own right be entitled to immediate possession—Practice.

Held, that where a Magistrate, after entertaining proceedings under section 145 of the Code of Criminal Procedure, had declined to make any order declaring one or other of the contending parties in possession, the High Court would not interfere in revision at the instance of a person who, though apparently the next reversioner to the estate, could for the time being have no possible right on his own behalf to present possession: *Laldhari Singh vs. Sukhdeo Narain Singh*, I. L. R., 27 Cal., 892, and *Anesh Mollah vs. Esharuddi Mollah*, I. L. R., 28 Cal., 446, distinguished.

[24 All. page 454.]

(E.) **EMPEROR vs. HARPAL RAI.**

Act, 1878—XI (Indian Arms Act), section 19—"Going armed"—The mere carrying of arms for purposes other than their use as such not an offence.

One C. N., a person entitled to possess and use fire-arms, gave a pistol to an acquaintance, who was not entitled to possess and use fire-arms, asking him to take it and get it repaired in a neighbouring town. This acquaintance gave the pistol to his father Harpal Rai, who was taking it into the town to get it repaired, when he was arrested, and charged with an offence under section 19 of the Indian Arms Act, 1878.

Held, that Harpal Rai was under the circumstances guilty of no offence, under the Arms Act.

The mere temporary possession, without a license of arms for purposes other than their use as such, is not an offence within the meaning of section 19 of the Arms Act. *Queen-Empress vs. Alexander William*, Weekly Notes, 1891, page 208; *Queen-Empress vs. Bhure*, Weekly Notes, 1892, page 221, and *Queen-Empress vs. Tota Ram*, Weekly Notes, 1894, page 33, referred to.

[24 All. page 471.]

(A.) EMPEROR vs. NABBU KHAN.

Criminal Procedure Code, section 110 et seq.
—Security for good behaviour—Power of Court to assign geographical limits within which the sureties required must reside.

Held, that a Court in ordering security for good behaviour to be given with sureties is competent to assign some geographical limits within which the sureties required must reside: Queen Empress vs. Bahim Bakhsh, I. L. R. 20 All., 206, referred to.

[24 All. page 511.]

(B) EMPEROR vs. SULLIVAN.

Criminal Procedure Code, section 451—European British subject—Right of European British subject to be tried by a jury—Such right claimable at any time before accused has entered upon his defence notwithstanding previous waiver.

One Sullivan was sent for trial to the District Magistrate of Meerut, the offence alleged against him being one under section 354 of the Indian Penal Code, i.e., a warrant case. At the outset of the proceedings the accused was asked whether he wished to be tried by a jury, and replied in the negative. A charge was framed against the accused; and at his request certain witnesses who had been examined for the prosecution were ordered to be recalled for cross-examination. After the charge was framed, but before the accused had entered upon his defence, an application for a jury was presented on behalf of the accused. The Magistrate disallowed this application.

Held, that the fact that the accused, before the trial had begun, had stated that he did not wish for a jury, did not prevent him from afterwards claiming a jury within the time allowed by section 451 (1) of the Code of Criminal Procedure, and that the Magistrate was wrong in disallowing the application.

[25 All. page 76.]

(C) EMPEROR vs. DURGA CHARAN GIR.

Indian Penal Code Act XLV of 1860) sections 193 and 51. Fabricating false evidence—Attempt to commit forgery.

One Durga Charan Gir had an ejestment case against Ram Ghulam, which was decided against him. After this, on the 23rd of November, 1901, Durga Charan took his servant Dault to the town of Padrauna, and there purchased an 8-anna stamp paper in the name of Ram Ghulam. Dault personated Ram Ghulam, and told the stamp-vendor that he

was Ram Ghulam, so that the stamp vendor put down the name of Ram Ghulam on the stamp paper as the purchaser of it. The stamp paper was subsequently found in the possession of Durga Charan, who had locked it up in a chest in his house.

Held, upon the above facts that Durga Charan was properly convicted of the offence of abetting the fabrication of false evidence, though his acts did not amount to an attempt to commit forgery. Queen-Empress vs. Mah, I. L. R., 3 All., 106, followed.

[23 Bom. page 213.]

(D.) EMPRESS vs. DURANT.

Witness—Accused person calling as witnesses persons charged with him and awaiting a separate trial for same offence—Criminal Procedure Code (Act V of 1898), section 342, clause 4. Evidence Act (1 of 1872), section 132—Practice—Procedure.

The accused D, a European British subject, was charged, together with others who were natives of India, under sections 384, 385 and 387 of the Penal Code (Act XLV of 1860) with conspiring to commit extortion. The accused claimed to be tried by a mixed jury under section 450 of the Criminal Procedure Code (Act V of 1898). The other accused, who were natives of India, then claimed to be tried separately under section 452. The trial of D then proceeded, and at the close of the case for the prosecution, he proposed to call as his witnesses the persons who had been charged with him and who were awaiting their trial. They objected to be called.

Held, that he was entitled to call them as witnesses and to examine them on oath.

The words "the accused" in clause 4 of section 342 of the Criminal Procedure Code (Act V of 1898), mean the accused then under trial and under examination by the Court.

[33 Bom. page 221.]

(E.) QUEEN-EMPRESS vs. RAGHU.

Confession—Confession not signed by the accused—Admissibility of such confession—Parol evidence admissible to prove the terms of the confession—Criminal Procedure Code (Act X of 1882), section 533.

Section 533 of the Code of Criminal Procedure (Act X of 1882) is intended to apply to all cases in which the directions of the law have not been fully complied with. It applies to omissions to comply with the law as well as to infractions of the law. Queen-Empress vs. Visram Babaji [1896], 21 Bom., 463, followed.

Jai Narayan Rai vs. Queen-Empress [(1890) 17 Cal., 683] dissented from.

The accused was charged with murder. At the trial a confession made by him before the Committing Magistrate was tendered in evidence against him. The Sessions Judge rejected the confession as inadmissible, as it did not bear the mark or signature of the accused, and, as there was no other reliable evidence to bring home the charge to the accused, he was acquitted.

Held, reversing the order of acquittal that though the record of the confession was inadmissible, parol evidence could be given of the terms of the confession, and those terms, when proved, might be admitted and used as evidence against the accused under section 233 of the Code of Criminal Procedure (Act X of 1892). The accused was, therefore, ordered to be retried.

[23 Bom. page 248.]

(A.) **KALA GOVIND vs. MUNICIPALITY OF THANA.**

Municipality—Bombay District Municipal Act (Bom. Act VI of 1873), section 48—Re-erection of a structure formerly existing not within the section.

Section 48 of the Bombay District Municipal Act (Bom. Act VI of 1873) refers to the erection of a thing for the first time, and not to the re-erection of an old structure which had been taken down for a temporary purpose only.

The accused was the owner of a shop in a public street at Thana. The shop had planks attached to it in front, overhanging a public gutter. These planks had been in existence before the District Municipal Act came into operation at Thana. In April 1897, the planks were temporarily removed under the order of the plague authorities. The plague having ceased, the accused replaced the planks in October, 1897, without the permission of the Municipality. For this he was prosecuted and fined under section 48 of Bombay Act VI of 1873.

Held, reversing the conviction and sentence, that the refixing of the planks was not an "erection" within the meaning of section 48 of the Act.

[23 Bom. page 316.]

(B.) **QUEEN-EMPRESS vs. GANGIA.**

Criminal Procedure—Judge's charge—Misdirection—Confessions Retracted confessions—Admissibility of such confessions without corroborative evidence—By once.

The accused were tried for murder. The Sessions Judge, in his charge to the jury, described the evidence generally, describing it as very poor evidence which, standing

alone, amounted to nothing. He also told the jury that, as regards retracted confessions, "the law is that you are to look for corroboration in independent evidence. If that supplies such corroboration that you can confidently say, 'the confessions must be absolutely true,' you can act upon them, otherwise not."

Held, that the charge was defective. The Sessions Judge ought to have summed up the evidence to the jury calling their attention to the material parts of it, and leaving them to form their own opinion on it instead of treating it generally.

Held, also, that the Judge had misdirected the jury, as there is no rule of law that a retracted confession cannot be treated as evidence, unless it is corroborated in material particulars by independent reliable evidence.

[23 Bom. page 439.]

(C.) **QUEEN-EMPRESS vs. CHAGAN JAGANNATH.**

Criminal Procedure Code (Act X of 1882), section 428—Appellate Court Powers of Appellate Court to enhance sentence—Sentence—Alteration of sentence.

The accused was convicted of criminal breach of trust and sentenced to nine months' rigorous imprisonment. On appeal, the conviction was upheld, but the sentence was altered to one of six months' rigorous imprisonment and a fine of Rs. 1,000, or, in default of payment, three months' further rigorous imprisonment. The accused applied to the High Court in revision, contending that the alteration of the sentence amounted to an enhancement of the sentence beyond the powers of the Appellate Court under section 423 of the Code of Criminal Procedure (Act X of 1882).

Held, that there was no enhancement of the sentence: *Queen-Empress vs. Ishri* [(1894), 17 All., 67] distinguished.

[23 Bom. page 446.]

(D.) **MUNICIPALITY OF WAI vs. KRISHNAJI GANGA-DHAR.**

House-Tax—House valuation—Valuation made by Municipality Magistrate's power to revise the valuation—Bombay District Municipal Act (Bom. Act VI of 1873), section 94, as amended by Bombay Act II of 1884—Municipality.

Under the rules passed under the Bombay District Municipal Act (Bom. Act VI of 1873) as amended by Bombay Act II of 1884, the Municipality of Wai estimated the annual letting value of a house belonging to the accused at Rs. 60 and levied a house-tax of Rs. 2-6-0. A, a tax payer, applied to the managing committee for a reduction of the

tax, but his application was dismissed. Default having been made in payment of the tax, A was prosecuted under section 84 of the Act before a Second Class Magistrate. He contended that the estimate made by the Municipality was too high, and that his house would not let for more than 10 or 12 rupees a year. The Magistrate took evidence on the point and found that the annual rental of the house would not exceed Rs. 12, and he ordered payment of 12 annas only on account of the tax.

Held, that the Magistrate had no power to go behind the estimate of value framed by the managing committee under the powers given to it by the rules. He ought to have accepted as conclusive the amount found by the managing committee to be the letting value of the house, and held the legal liability of the accused to pay the tax based on this amount to be proved.

The remedy of the accused, if he considered his house assessed too highly, was to apply to the managing committee, and no other mode of redress was open to him.

Municipality of Ahmedabad vs. Jumna Punja (1891) 17 Bom., 731 and Imperatrix vs. Nathu Hirachand (Cr. Rul. 35 of 1891) distinguished.

[23 Bom. page 484.]

(A.) *In re BULAKIDAS.*

Criminal Procedure Code (Act X of 1882), section 488 Maintenance—Husband and wife—Maintenance order obtained by a wife against husband—Subsequent decree for restitution of conjugal rights obtained by husband—Effect of such decree on previous order of maintenance.

A decree of a Civil Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance, if the wife should persist in refusing to live with her husband. A Magistrate ought to cancel a previous order of maintenance made by him, or rather treat it as determined, if the wife failing to comply with the decree for restitution refuses to live with her husband.

[23 Bom. page 490.]

(B.) *In re JIVANJI ADAMJI.*

Pleader—Appointment of a pleader to act as Presidency Magistrate—Appointment not forbidden by the Code—Criminal Procedure Code (Act V of 1898), section 557.

The appointment of a pleader to act as a Magistrate is not forbidden by section 557 or any other provision of the Code of Criminal Procedure (Act V of 1898).

After the Criminal Procedure Code of 1898 had come into force, a practising pleader was appointed to act as a Presidency Magistrate. On his appointment he gave up practising and was not practising at the time the accused was tried and convicted by him of theft. The accused applied to the High Court, in revision, to quash the conviction, on the ground that the appointment of the Magistrate contravened the provisions of section 557 of the Code of Criminal Procedure.

Held, that section 557 of the Code does not deal with appointments, and had no application to the present case, as the Magistrate was not practising at the time the accused was tried and convicted.

[23 Bom. page 493.]

(C.) *QUEEN-EMPRESS vs. BHAU*

Criminal Procedure Code (Act V of 1898), section 237—Pardon tendered to one of the accused—Approver—Trial of approver for non fulfilment of the condition on which pardon was offered—Practice.

No action can be taken against a person who has accepted a pardon for breach of the condition on which the pardon was tendered until after the case in the Court of Sessions has been finished, and then his trial should be commenced *de novo*.

[23 Bom. page 494.]

(D.) *NARAYAN vs. VISAJI.*

Criminal Procedure Code (Act X of 1882), sections 522, 5-3, 524 Quier. to restore possession of immoveable property.

An order made under section 522 of the Criminal Procedure Code (Act X of 1882) restoring possession of immoveable property to a person who has been dispossessed of it by criminal force, is an independent order and may be made subsequently to the date of the conviction of the offender. It need not be made at the same time as the conviction.

The case contemplated by section 522 is that of a person in possession (the complainant) being dispossessed by force by another person (the accused) and the latter being in possession at the date of conviction. In such a case the section gives the Magistrate power to order possession to be restored to the complainant. In the case of a proper order, third persons could not be affected, if they are, the order is not thereby necessarily invalid. Clause 2 of the section gives them a remedy by civil suit.

On 27th September, 1897, complainant charged one Ravlo with criminal trespass under section 447 of the Indian Penal Code (Act XLV of 1860). He alleged that in the previous July Ravlo had entered into the

sion of the land and sowed rice upon it, and that when in the month of September, 1897, he (the complainant) went to the field, Kavi had turned him out by force and refused to vacate the field. On the 17th November, 1897, the case was heard by the Third Class Magistrate, who convicted Kavi of the offence charged.

On the following day (18th November, 1897), the complainant applied to the Magistrate under section 522 of the Code of Criminal Procedure (Act X of 1882) to be restored to possession of the land and of the standing crops. The Magistrate ordered possession of the land to be restored to the complainant, but attached the crops under Chapter XLIII of the Criminal Procedure Code.

Thereupon one Visaji intervened and claimed the crops as having been sown by himself. His claim was disallowed, and the crops were ordered to be sold and the proceeds credited to Government under sections 523 and 524 of the Code.

Held, that the order made by the Magistrate under section 522 restoring possession of the land to the complainant was bad, because it did not appear that the offence of which the accused was convicted was attended with criminal force, and that the dispossession was due to the use of such force. The illegal entry complained of had taken place in July, 1897. The accused then took possession, and in September, being then still in possession, forcibly resisted the complainant when he attempted to enter upon the land. The complainant, however, did not charge the accused with this assault, but with the trespass which had taken place in July. It is only when the actual use of criminal force leads to dispossession that an order under section 522 can be made.

Held, also, that the order passed under sections 523 and 524 with reference to the crops were illegal. The crops were not property in respect of which the offence was committed, nor were they used in the commission of the offence. They were not such property as is referred to in sections 517, 523 or 524 of the Criminal Procedure Code.

Held, also, that the Third Class Magistrate, as such, had no authority to make an order under section 524.

[23 Bom. page 528.]

(4.) MUNICIPALITY OF BOMBAY
vs. AHMEDBHAY HABIBBHAY.

Municipality—Bombay Municipal Act (Bom. Act III of 1888, section 249—“Employed”—Meaning of the word—Discretion vested in the Municipal Commissioner.

The word “employed” in section 249 of the Bombay Municipal Act (Bom. Act III of 1888) refers to employment, of any kind or for any length of time.

[23 Bom. page 696.]

(B.) QUEEN-EMPRESS vs. JEY-
RAM HARIBHAI.

Criminal Procedure Code (Act V of 1898),
sections 269, clause (3) and 307—Jury
—Trial by jury of an offence triable with
the aid of assessors—Practice.

The accused was tried by a jury on four charges: (1) forgery, (2) using a forged document, (3) criminal misappropriation, and 4) attempting to use a forged document as genuine. The jury returned a unanimous verdict of “not guilty” on all the charges. The Sessions Judge agreed with the jury in their verdict on the 1st, 2nd and 4th charges, but he differed from them on the 3rd charge, which was criminal misappropriation. This offence was not triable by a jury and ought, therefore, under clause 3 of section 269 of the Criminal Procedure Code (Act V of 1898), to have been tried by the Sessions Judge with the aid of the jurors as assessors. Nevertheless the Judge took the verdict of the jury upon this charge, and differing from it, referred the case to the High Court under section 307 of the Code.

Held, that, although the procedure of the Sessions Judge was irregular, the trial by jury must be accepted as legal, and the case as one that could be referred to the High Court under section 307 of the Criminal Procedure Code.

[23 Bom page 706.]

(C.) QUEEN-EMPRESS vs. MALU
AND QUEEN EMPRESS
vs. NAGU.

Criminal Procedure Code (Act V of 1898),
section 35—Conviction of several offences
at one trial—One sentence only to be
passed in such cases—Sentence—Indian
Penal Code (Act XLV of 1860), section
71.

Where a person commits house-breaking in order to commit theft, and theft, he may be charge with, and convicted of, each of these offences. In awarding punishment under the provision of section 71 of the Indian Penal Code (Act XLV of 1860), the Court should pass one sentence for either of the offences in question and not a separate one for each offence.

If in such a case two sentences are passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court, that would be an irregularity, and not an illegality, calling for the interference of a Court Appeal or Revision.

[32 Bom. page 788.]

(A.) QUEEN-EMPRESS vs. DABHAI ABHAI.

Salt Act (Bom. Act II of 1890), section 47 (a)—Possession of salt water with the intention of manufacturing salt.

The mere possession of salt water with the intention of manufacturing salt therefrom, not an offence under the Bombay Salt Act (Bom. Act II of 1890).

[24 Bom. page 75.]

(B.) *In re* KHIMJI JAIRAM.

Municipality—Bombay City Municipal Act (Bom Act III of 1888), section 249—Notice to construct urinals in a particular place in the owner's premises—Illegality of such notice.

Accused was convicted and fined Rs. 50 for not complying with a notice issued by the Municipal Commissioner of Bombay under section 249 of Bombay Act III of 1888. The notice required him to construct a urinal of six compartments in the open space inside the entrance gateway to the Cloth Market from Champawdy, and a water-closet in the corner of the entrance from 1st Ganeshwady near the fire-engine station.

Held, reversing the conviction and sentence, that the notice was *ultra vires*, inasmuch as it required the accused to construct urinals in a particular place in his premises.

[24 Bom. page 125.]

(C.) MUNICIPAL COMMISSIONER OF BOMBAY vs. HARI DWARKOJI.

Municipality—Bombay City Municipal Act (Bom Act III of 1888), section 881—Low ground—Low-lying ground—Notice by Municipal Commissioner requiring owner of low lying ground to fill it with sweet earth up to a certain level.

Under section 881 of the Bombay Municipal Act III of 1888, the Municipal Commissioner for the City of Bombay issued a notice to the appellant as owner of certain low lying ground. The notice stated that in the opinion of the Commissioner the ground accumulated

water in the monsoon and caused nuisance to the tenants of two chawls situated. The owner was, therefore, required by the notice "to fill in the low-lying ground with sweet earth to the level of the road and slope it towards the new drain on the roadside."

As the owner refused to comply with the notice, he was convicted and sentenced to pay a fine of Rs. 15 by the Presidency Magistrate under section 471 of the Municipal Act (Bom. Act III of 1888).

Held, reversing the conviction and sentence that the notice was illegal. The words used in section 881 are "low ground," which is not the same as low-lying ground. And though the section gives power to the Commissioner to require the owner of low ground to cleanse and fill up the same, it does not permit him to issue an order that an indefinite extent of low-lying ground shall be filled up, much less that it shall be filled up to some particular level, or filled up with sweet earth, or that it shall be sloped in a particular direction.

[24 Bom. page 287.]

(D.) QUEEN-EMPRESS vs. BAKU.

Criminal Procedure Code (V of 1898), section 188—Indian Penal Code (Act XLV of 1860), sections 108A, 372—Disposal of a minor for immoral purposes—Abetment—Offence committed out of British India—Jurisdiction—Offence not triable except with the certificate of Political Agent or sanction of Government.

A minor girl under the age of sixteen years was taken by accused No. 1, under the direction of accused No. 2, from Sholapur to Tuljapur (in the Nizam's territory), and there dedicated to the goddess Amba, with intent or knowing it to be likely that the minor would be used for purposes of prostitution.

The District Magistrate of Sholapur convicted accused No. 1 of an offence under section 372 and accused No. 2 of abetment of the offence under sections 372 and 108A of the Indian Penal Code, and sentenced them each to six months' rigorous imprisonment.

Held, that as the offence of the disposal of the minor took place out of British India, the Magistrate had no jurisdiction to try the offence, in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by section 188 of the Code of Criminal Procedure (Act V of 1898).

Held, also, that accused No. 2 was not guilty of abetment, and section 108A of the Indian Penal Code had no application to the present case.

More intention not followed by any act cannot constitute any offence and an indirect preparation which does not amount to an act which amounts to a commencement of the offence does not constitute either a principal offence or an attempt or abetment of the same.

The intention of either of the accused, while they were staying at Sholapur, did not constitute any offence, and their removal with the girl to Tuljapur did not by itself constitute an abetment.

[24 Bom. page 296.]

(A.) *In re DADABHAI JAMSEDJI.*

Railways Act (IX of 1890), section 110—
"Compartment"—Meaning of the word.

Per JENNINGS, C.J. and CANDY, J.:—Good sense requires that to the word "compartment" in certain sections of the Indian Railways Act (IX of 1890) the quality of complete separation should be attributed, and it is with that force that it is used in section 110.

Per RAMAIAH, J.:—The word "compartment" is used in section 110 of Act IX of 1890 in the same sense in which it is used throughout the Act, and does not necessarily mean a completely partitioned division.

✓ [24 Bom. page 422.]

(B.) *QUEEN-EMPRESS vs TYAB ALLI.*

Master and Servant—Indian Arms Act (XI of 1878), section 22—Master's liability for the criminal acts of his servant

Where the manager of a licensed vendor of arms, ammunition and military stores sold certain military stores without previously ascertaining that the buyer was legally authorized to possess the same.

Held, that the licensee was liable to punishment under section 22 of the Indian Arms Act (XI of 1878), though the goods were not sold with his knowledge and consent.

The principle—"whatever a servant does in the course of his employment with which he is entrusted and as a part of it, is his master's act"—is applicable to the present case.

Attorney-General *vs.* Siddon (1880), (1 Cr. and J., 220) followed.

[24 Bom. page 471.]

(C.) *In re RATTANSEE PURSHOTTUM.*

Jurisdiction—Muscat—Court of Her Majesty's Consul at Muscat—High Court's criminal revisional jurisdiction over the Consular Court—Order in Council, dated 4th November, 1867—Criminal Procedure Code (Act V of 1898), section 435.

The High Court at Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat.

(24 Bom. page 537.)

(D.) *In re PANDURANG GOVIND.*

Criminal Procedure Code (Act V of 1898), sections 144, 145, 435 and 439—Dispute about right to perform service in a public temple—Notice—High Court—High Court's criminal revisional jurisdiction.

A Magistrate professing to act under section 145 of the Criminal Procedure Code (Act V of 1898), is bound to follow the proper procedure. He must set forth the grounds on which he is satisfied that there is a dispute likely to cause a breach of the peace. He is bound to issue notices to all parties concerned so as to give them an opportunity to put in their respective claims. And his order should not interfere with the rights of the parties as determined by previous decisions of the Civil Court.

A dispute relating to the right of performing religious service in a public temple when it is likely to cause a breach of the public peace, falls under section 145 of the Criminal Procedure Code (Act V of 1898).

The High Court ordinarily has no jurisdiction to interfere with an order under Chapter XII of the Criminal Procedure Code (Act V of 1898), which is not a proceeding within the meaning of section 435 of the Code: but when the Magistrate exceeds his jurisdiction under section 144 or 145, the High Court has power to interfere under its revisional jurisdiction (section 439).

A dispute arose between certain classes of priests attached to a Hindu temple about the right of performing a certain religious service. On the complaint of one of the parties, the Magistrate of the district, purporting to act under section 145 of the Code of Criminal Procedure (Act V of 1898), passed an *ex parte* order prohibiting the other party from taking any part in the said service, although both parties had been previously declared by the Civil Court to be entitled to officiate at the service.

Held, that the order was illegal, and opposed to the provisions of section 145 of the Code.

[25 Bom. page 45.]

(E.) *IMPERATRIX vs RUDRA.*

Evidence—Dying declaration—Indian Penal Code (Act XLV of 1860), section 396.

Appellant was convicted and sentenced to transportation for life on a charge of dacoity. The most material evidence for the prosecution was the statement, in the nature of a dying declaration, made to the jamadar of

police by one Fakiria Shimpi, who received wounds during the dacoity and who died before the trial commenced.

The Assistant Surgeon, who made the *post-mortem* examination on the deceased, was not called, being on leave, but the Civil Surgeon, on a perusal of the notes left by the Assistant Surgeon, gave evidence that the cause of death of the deceased was pneumonia aggravated by a stab. In the notes themselves no cause of death was given, and there was no evidence as to how the pneumonia was aggravated. No explanation was given as to how the opinion was formed that the pneumonia was aggravated by the injury, and there was nothing in the notes to support it.

Held, that the statement of the deceased ought not to have been admitted in evidence in the absence of evidence to show that his death was caused or accelerated by the wounds received at the dacoity, or that the dacoity was the transaction which resulted in his death.

[25 Bom. page 48.]

(A.) *In re* GOVIND HANAMANT.

Criminal Procedure Code (Act V of 1898), section 250—Application for an order that a person should give security to keep the peace—Refusal of application—Compensation under section 250 of Criminal Procedure Code (V of 1898).

To justify the application of section 250, a person must be accused before a Magistrate of an offence triable by a Magistrate.

A applied to a Magistrate of the First Class to order B to give security to keep the peace (section 107, Criminal Procedure Code, 1898). The Magistrate, after inquiring into the matter discharged B under section 119 of the Criminal Procedure Code, and directed A to pay B Rs. 50 as compensation under section 250 of the Code.

Held, that the award of compensation was illegal. The institution of proceedings under section 107 of the Criminal Procedure Code was not an accusation of an offence triable by a Magistrate within the meaning of section 250 of the Code.

Queen-Empress *vs.* Lakhpat [(1898) 15 All., 365] followed.

[25 Bom. page 90.]

(B.) QUEEN-EMPRESS *vs.* ANANT PURANIK.

Criminal Procedure Code (Act V of 1898), sections 196 and 235—Sanction to prosecute—Joinder of charges—Trial for more than one offence—Offences falling under two definitions.

The accused was committed for trial before a Sessions Court on a charge of abetment of

dacoity under section 116 of the Indian Penal Code (Act XLV of 1860). In the course of the trial the Assistant Sessions Judge added an alternative charge under section 511 of the Code and sentenced the accused under sections 395, 116 and 511 of the Indian Penal Code (Act XLV of 1860).

In appeal the Sessions Judge *held*, that the evidence disclosed the offence of an attempt to commit the offence of collecting arms, etc., with intention of waging war against the Queen under section 122, and as no charge under that section could be framed for want of the sanction of Government under section 196 of the Criminal Procedure Code (Act V of 1898), the accused could not be brought to trial at all. He, therefore, reversed the conviction and acquitted the accused.

Held (reversing the order of acquittal), that the mere fact that no charge for the graver offence under section 122 of the Indian Penal Code (Act XLV of 1860) could be framed for want of Government sanction, did not render the trial for the minor offence of attempting or abetting dacoity, either irregular or illegal.

Per FULTON, J. According to the 2nd clause of section 235 of the Criminal Procedure Code (Act V of 1898), if the accused abetted an offence under section 122 of the Penal Code, and by the same speech also attempted or abetted the offence of dacoity, he could be tried for each of those offences; but as that section is controlled, as regards the offence against the State, by the provisions of section 196 of the Criminal Procedure Code, its operation in this case is restricted to the minor offence for which the accused could legally be charged and tried.

Queen-Empress *vs.* Karigowda [(1894), 19 Bom., 51], and *in re* Nagariji [(1894), 19 Bom., 340] distinguished.

[25 Bom. page 161.]

(C.) CHHOTTA LAL *vs.* NATHABHAI.

Penal Code (Act XLV of 1860), section 499, Explanation I—Criminal Procedure Code (Act V of 1898), section 4 (a), Chapter XV, Part B, sections 191, 195, 196, 198, 199, and section 345—Defamation of wife—Complaint by husband—Aggrieved party.

Held by the Full Bench (Ranade, J. dissenting; that under the provisions of the Criminal Procedure Code (Act V of 1898) a husband is entitled to be complainant where the alleged offence is defamation, imputing and chastity to his wife.

[25 Bom. page 168.]

(4.) **QUEEN-EMPRESS vs. BAS-VANTA.**

Evidence Act (I of 1872), section 33 — Witness—Deposition of a deceased witness—Admissibility of such deposition in subsequent proceedings—Evidence—Confession—Retracted confession—Evidence Act (I of 1872), sections 24, 30 and 33.

A confession duly recorded and certified under section 164 of the Criminal Procedure Code (Act V of 1898) is admissible in evidence against the person making it, unless shut out by the provisions of section 24 of the Indian Evidence Act (I of 1872).

A mere subsequent retraction of a confession which is duly recorded and certified by a Magistrate is not enough in all cases to make it appear to have been unlawfully induced.

The law in India is not identical with the law in England on the relevancy and admissibility of confessions.

Imperatrix vs. Balya Daglu [(1889) Cr. Rul. No. 3] dissented from.

Reg. vs. Balvant [1874], 11 B. H. C. R., 137 followed.

Where a witness for the prosecution was examined before a Committing Magistrate, but was not cross-examined, and then died before the case came on for trial to the Sessions Court, and his deposition was tendered in evidence at the trial.

Held, that the deposition was admissible under section 33 of the Evidence Act (I of 1872).

[25 Bom. page 179.]

(B.) *In re* **PANDURANG GOVIND.**

Criminal Procedure Code (Act V of 1898), sections 145 and 526—Transfer of a case—Criminal case—Bias of Judge—Magistrate's powers under section 145—Breach of peace—Rights of the parties—Practice.

The provisions of section 526 of the Criminal Procedure Code (Act V of 1898) do not give any power to direct the transfer of any proceedings initiated under section 145 of the Code. Such proceedings do not constitute a "criminal case" within the meaning of section 526 of the Code. A criminal case means a case arising out of, and dealing with, some crime already committed. It does not include proceedings taken for the prevention of crime.

Under section 145 of the Code a Magistrate is not at liberty to go into the merits of the claims of any of the parties to the dispute, to

a right to possess the subject thereof. He can decide only the fact of possession at the date of the order requiring the parties to put in their statements.

The parties cannot be called upon to furnish a statement of their rights, nor can the Magistrate take, as the basis of any action he may finally decide upon, any conclusion at which he may arrive, or at which he may have arrived, as to the respective titles of the parties.

[25 Bom. page 422.]

(C.) **QUEEN-EMPRESS vs. HUSSEIN HAJI.**

Practice—Criminal Procedure Code (Act V of 1898), sections 337 and 494—Withdrawal of prosecution—Discharge—Acquittal—Evidence—Discharged person called as witnesses—Competent witness.

Where the public prosecutor with the consent of the Court withdrew from the prosecution of two out of several accused persons tried jointly for an offence under section 4 of the Gambling Act (Bom. Act IV of 1887), and the two accused were thereupon discharged under section 494 of the Criminal Procedure Code (Act V of 1898) and then examined as witnesses for the prosecution.

Held (WHITWORTH, J., dissenting), that the persons so discharged were competent witnesses.

[25 Bom. page 543.]

(D.) **QUEEN-EMPRESS vs. NARAYAN**

Evidence—Confession—Confession of an accused while in custody of the Police—Duty of Magistrate when such confession is made—Sessions Judge—Duty of—Criminal Procedure Code (Act V of 1898), section 160 (3)—Evidence Act (I of 1872), section 24.

When an accused person has been in custody of the Police and has made a confession, it is important that the Magistrate before recording such confession under section 164 of the Criminal Procedure Code (V of 1898) should ascertain how long the accused has been in custody. If there is no record of that fact, it is the duty of the Sessions Judge, before holding the confession relevant under section 24 of the Evidence Act (I of 1872), to send for the Magistrate and satisfy himself on the point.

[25 Bom. page 636.]

(A.) KING vs. THE CHIEF OFFICER
OF S.S. "MUSHTARI."

Jurisdiction—High seas—Offence committed on the high seas.—Procedure—Penal Code (Act XLV of 1860), 37 and 38 Viet.; chapter 27, section 3.

A Presidency Magistrate has authority to charge, convict, and sentence, under the Indian Penal Code (Act XLV of 1860), a person who has committed an offence in a British ship during her voyage on the high seas. The law applicable both as regards procedure and punishment to the Indian law.

[25 Bom. page 667.]

✓ (B.) IMPERATRIX vs. RATNYA.

Jurisdiction—Scheduled Districts—Reference and appeal in a criminal case from the Scheduled Districts—Act No. XI of 1846—Scheduled Districts, Act XIV of 1874.

The Collector of Khandesh, in his capacity of Political Agent for the Mehwasi Estates, convicted the accused of murder committed at a village in the Scheduled Districts, and sentenced him to transportation for life. He then forwarded the proceedings to Government for confirmation. The accused also appealed to Government against the conviction and sentence. The Government thereupon directed the Political Agent to submit the proceedings to the High Court under Rule 35 of the Rules promulgated in 1855 under section 301 Act XI of 1846. The appeal presented by the accused was also forwarded to the High Court. The question arose as to whether the High Court had jurisdiction to dispose of the reference, the appeal being rejected as not allowed.

Held, that the High Court had jurisdiction.

[25 Bom. page 675.]

(C.) KING-EMPEROR vs. BALA.

Criminal Procedure Code (Act V of 1898), sections 337 and 339—Pardon tendered and accepted—Evidence given and pardon withdrawn by Magistrate—Forfeiture of pardon must be proved—When may forfeitures be declared and pardon withdrawn.

A Committing Magistrate having under section 337 of the Criminal Procedure Code (Act

V of 1898) tendered a pardon to one of three accused persons, examined him as a witness. Subsequently, however, the Magistrate, under section 339 of the Code, withdrew the pardon on the ground that the accused had wilfully concealed a certain fact connected with the offence, and he committed him along with the other accused for trial at the Court of Sessions, where he was found guilty. In giving judgment the Sessions Judge expressed his opinion that the withdrawal of the pardon by the Magistrate was illegal, (1) because such withdrawal could not be made until the close of the trial and should be made by the Court of Sessions, and (2) because the fact, the alleged concealment of which was the ground of the withdrawal, had not been proved. The accused, however, was found guilty and sentenced. On appeal to the High Court—

Held, that the conviction and sentence should be set aside on the ground that it had not been proved that the pardon had been forfeited under section 339 of the Criminal Procedure Code (V of 1898). The alleged fact, the concealment of which was the ground for withdrawing the pardon, had not been proved. If the pardon which had been granted had not been forfeited under section 339, it was still in force and the accused should be discharged.

As the law stands, the question in such cases is whether the accused has forfeited his pardon by some act of his own. The question is one of fact in which the Magistrate may hold one opinion and the Sessions Judge another as may happen in the case of any other question of fact in issue in the case. The Sessions Court has to determine for itself on the evidence whether the pardon has been forfeited: for if not, the accused, who has accepted such pardon, cannot be tried.

Quere—Whether the examination at the committal proceedings before the Magistrate of a person who has accepted a pardon satisfies clause 2 of section 337 of the Code which provides that every such person shall be examined as a witness "in the case," or whether such person must be examined as witness at the "trial."

Queen-Empress vs. Bhau (1898), 23 Bom 493, doubted.

[25 Bom page 680.]

(D.) KING-EMPEROR vs. PARBHU
SHANKAR.

Criminal Procedure Code (Act V of 1898), sections 260 and 418—Offence triable with the aid of assessors tried in fact by a jury—Trial by jury—Appeal on a matter of fact—Practice—Procedure.

Under section 418 of the Criminal Procedure Code (V of 1898) no appeal lies on matters of fact where an accused person is convicted by a jury on a charge which has been tried with the aid of assessors.

An accused person was charged with and tried for offences under sections 302, 304 and 325 of the Penal Code (Act XLV of 1860). Under the first of these charges he was triable by a jury. Under the latter two he was triable with the aid of assessors. He was, however, tried for all three offences by a jury who found him guilty on the third charge. The Judge accepted the verdict and sentenced the accused to four years' rigorous imprisonment. The accused appealed.

Held, by a Full Bench that under section 418 an appeal lay in this case on matters of law only and not on matters of fact.

Per JENKINS, C. J.:—"The words in section 418 of the Criminal Procedure Code, 1898, 'when the trial was by jury' mean 'when the trial in fact was by jury' and not 'when the trial should have been by jury.'"

[25 Bom. page 694.]

(A.) KING-EMPEROR *vs.* JAYRAM.

Criminal Procedure Code (Act V of 1898), sections 284, 285 and 537—Trial with aid of assessors—Trial with the aid of one assessor only—Legality of such trial—Assessors.

In a case triable by a Court of Session with the aid of assessors, one of the assessors being ill, the trial commenced and ended with only one assessor.

Held, that there was no legal trial, that the proceedings must be set aside and a new trial directed.

Section 537 of the Criminal Procedure Code (Act V of 1898) had no application to such a case, as the Court was not properly constituted.

[25 Bom. page 702.]

(B.) *In re* MATHUR LALBHAI.

Criminal Procedure Code (Act V of 1898), section 517—Disposal of stolen property on conviction of the thief—Babashahi coin—Legal tender—Customary coin.

A witness for the prosecution in a case of theft produced a sum of money in Babashahi (Baroda) coin (part of the stolen property) which the accused had paid to him in satisfaction of a debt. The accused was convicted, and at the close of the trial the Court, under section 517 of the Criminal Procedure Code (V of 1898), ordered the money to be restored to the complainant from whom it had been stolen.

Held, that the order was right. The stolen coins were not current coin of the realm and were neither by statute nor by the law of ~~the~~ British India a legal tender. The property in them did not, therefore, pass by mere delivery, but remained in the complainant.

Collector of Salem (1873), 7 Mad. H. C. R., 233, and *Empréss vs. Joggessur Mochi* (1878), 8 Cal., 379, distinguished.

[25 Bom. page 712.]

(C.) KING-EMPEROR *vs.* BABYA BHIVA.

Whipping Act (III of 1895), section 4—Whipping—Dacoity—Penal Code (Act XLV of 1860), section 395—Previous conviction—Sentence.

Under section 4 of the Whipping Act, 1895, a sentence of whipping in addition to imprisonment is not legal in the case of a conviction of dacoity which was committed prior to the previous conviction of a similar offence.

Reg. vs. Surya [(1866) 3 B. H. C. R., 28, followed (Cr.)] and *Keg. vs. Kusa* (1870), 7 B. H. C. R., 70 (Cr.) followed.

[26 Bom. page 50.]

(D.) KING-EMPEROR *vs.* SAKHA-RAM PANDURANG.

Practice—Criminal Procedure Code (Act V of 1898), section 350—Sessions Judge—Magistrate—Trial—Evidence recorded partly by another Judge—Consent of the prisoner—Jurisdiction

Under the Code of Criminal Procedure a Sessions Judge is not authorized to try a case partly on evidence not recorded by himself, and he cannot do so, although the prisoner has given his consent to such a trial.

Section 350 of the Criminal Procedure Code applies solely to Magistrates.

[26 Bom. page 160.]

(E.) KING-EMPEROR *vs.* SADA.

Compensation—Criminal Procedure Code (Act V of 1898), section 4 (h) 250—Complaint—Report of Police officer—Complaint by a Police officer in a non-cognizable case—False complaint.

There is no section in the Criminal Procedure Code which empowers a Police officer to make, of his own motion, any report to a Magistrate in a non-cognizable case; hence where he files a formal complaint in such a case, he cannot be said to 'make a report,' and his complaint falls within the definition of 'complaint' in section 4 (h) of the Criminal Procedure Code, 1898.

Where a Police officer appears before a Magistrate and makes a formal complaint of a non-recognizable offence, which is found to be false, the Magistrate can order him, under section 250 of the Criminal Procedure Code to pay compensation to the accused.

[26 Bom. page 193.]

(A.) KING-EMPEROR *vs.* MALHAR
MARTAND KULKARNI.

Evidence—Corroboration—Bribery—Evidence Act (I of 1872), sections 114, ill. (b), and 133—Indian Penal Code (Act XLV of 1860), section 161—Accomplice.

It is generally unsafe to convict a person on the evidence of accomplices unless corroborated in material particulars. But, in considering whether this general maxim does not apply to a particular case, it must be remembered that all persons coming technically within the category of accomplices cannot be treated as on precisely the same footing: the nature of the offence and the circumstances in which the accomplices make their statements must always be considered. No general rule on the subject can be laid down.

A person who gives bribes is an accomplice of the person who receives them; and while it is usually unsafe to convict a public servant of receiving bribes on the uncorroborated evidence of persons who say they have given them, the question as to the amount of corroboration depends on the circumstances of each case.

[26 Bom. page 289.]

(B.) RADHA KRISHNA JOSHI *vs.*
KISSONLAL SHRIDHAR.

Trade Mark—Trade description—Title of a book—Unauthorized publication—Indian Penal Code (Act XLV of 1860), sections 478, 482—Merchandise Marks Act (IV of 1889), sections 4, 6.

The complainant, as a descendant of one Shri Chandu, had for many years prepared calendars bearing the name of "Shri Chandu Panchang" at Jodhpur and had sent each year a copy of such calendar to publishers in different parts of India, and from the copy so furnished those publishers issued and published calendars bearing the name "Shri Chandu Panchang," thus denoting them as calendars prepared in Jodhpur by the descendants of Chandu. The defendant, a publisher in Bombay, prepared a calendar and put the name "Shri Chandu Panchang" on the outside,

although the calendar was not prepared by the descendants of Shri Chandu. The complainant thereupon filed an information against the defendant under section 482 of the Indian Penal Code (Act XLV of 1860) and section 6 of the Merchandise Marks Act (IV of 1889).

Held, (1) that the defendant had committed no offence under section 482 of the Indian Penal Code (Act XLV of 1860), for the title "Shri Chandu Panchang" did not come within the definition of "trade-mark" given in section 478 of the Code;

(2) That the defendant's act did not fall under section 6 of the Merchandise Marks Act (IV of 1889), as it was not alleged that the defendant's calendars differed as to text from the complainant's or were compiled on different principles; the allegation was simply that they were unauthorized.

[26 Bom. page 413.]

(C.) EMPEROR *vs.* PURSHOTTAM
KARA; EMPEROR *vs.* DHARAM-
SHIGHELA.

Criminal Procedure Code (Act V of 1898), sections 257, 177, 110—Security for good behaviour—Witness—Magistrate—Summons—Refusal to summon—Procedure.

Section 257 of the Criminal Procedure Code (V of 1898) is imperative in its terms. It leaves to a Magistrate no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice; such ground, however, must be recorded by him in writing. The discretionary power of refusing to summon any particular witness is vested in the Magistrate, but the order of refusal must be such as to show in writing the ground of refusal as applied to each individual.

[26 Bom. page 533.]

(D.) EMPEROR *vs.* TRIBHOVAN.
DAS.

Criminal Procedure Code (Act V of 1898), sections 495, clause (4) and 537—Police officer investigating offence not to conduct prosecution—Procedure—Gambling.

A Police Inspector, who has taken part in the investigation into an offence, is not qualified to conduct the prosecution of the person charged with that offence (Criminal Procedure Code, Act V of 1898, section 495, clause 4).

[26 Bom. page 552.]

(A.) *In re* LAKSHMAN GOVIND
NIRGUDE.

Criminal Procedure—Procedure in Magistrate's Court—Information filed against an accused, but no summons issued—Case must be disposed of by Magistrate, although no summons applied for by complainant—Search warrant—Property seized by Police under warrant—Claim by third party—Inquiry by Magistrates as to claim of third party—Criminal Procedure Code (V of 1898), section 593.

Where an information is filed against a person, the Magistrate is bound to dispose of the case, and if no evidence is offered against the persons accused, he must be discharged. The complainant, by omitting to take out a summons against such person, cannot keep a charge hanging over him for an indefinite time. The summons is merely the means of procuring the attendance of the accused, but if he appears of his own accord without a summons, he is entitled to require that the complainants shall either be proceeded with or dismissed.

Where property is seized under a search warrant, the Magistrate must proceed to make enquiry so as to enable him to dispose of it. If a third party appears and alleges that the property seized is his, and is not the subject-matter of the offence charged, the Magistrate is bound to hear that party, and, if necessary, restore the property to its owner.

Magistrates must take care that the proceedings in their Courts are conducted with such reasonable expedition as will prevent the parties from being improperly harassed by undue delay.

In re Ratanlal Rangidas (1892), 17 Bom, 748, doubted.

[26 Bom. page 553.]

(B) *EMPEROR vs. LAKSHMAN*
RAGHUNATH.

Penal Code (Act XLV of 1860), sections 441, 448—Criminal trespass—House-trespass—Entry into house—Intent to annoy.

The accused No. 1, who held a decree against a certain judgment-debtor, went with his son, accused No. 2, and a Civil Court bailiff, to execute a warrant. Finding the door of the judgment-debtor's house shut, they entered his compound by passing through the complainant's house without his consent and notwithstanding his protest.

Held, that the accused's act amounted to criminal trespass, for when they trespassed

on the complainant's house notwithstanding his protest, they must, as reasonable men, have known that they would annoy him.

There is no presumption that a person intends what is merely a possible result of his action, or a result which though reasonably certain is not known to him to be so; but it must be presumed that when a man voluntarily does an act, knowing at the time that in the natural course of events a certain result will follow he intends to bring about that result.

Queen vs. Hicklin (1868), 3 Q. B., 376; *Queen vs. Martin* (1881), 8 Q. B. D., 58; *Reg. vs. Lobett* (1839), 9 C. & P., 466; *Freeman vs. Pope* (1870), 5 Ch., 538; *Ex parte Mercer, in re Wise* (1886), 17 Q. B. D., 290, referred to.

[26 Bom. page 609.]

(C.) *COWASJI M. SHROFF vs. G. I. P.*
RAILWAY COMPANY.

Animals—Cruelty to animals—Prevention of Cruelty to Animals Act (Act XI of 1890), section 3—Police Bombay Town (Act XLVIII of 1860), section 21—Railway Company—Master and servant—Criminal liability of master for his servant's acts—Goods yard of a railway—Public place.

The G. I. P. Railway Company carried twenty-seven head of cattle from Talegaon to Bombay. These cattle were put in one truck by their owner under the supervision of the Company's goods clerk at Talegaon, and were so allowed to be put by the Company's servants at Talegaon, in spite of a circular issued to them by the Traffic Manager to prevent the overcrowding of cattle. When the cattle were detained at the goods yard of the Company at Wadi Bundar, they were found suffering from the effects of overcrowding. The Bombay Society for the Prevention of Cruelty to Animals prosecuted the Railway Company under section 21 of Act XLVIII of 1860, and section 3(b) of the Act for the Prevention of Cruelty to Animals (Act XI of 1890). The Presidency Magistrate, who tried the case, referred to the High Court the following two questions:—

(1) Is the Company liable, under the above circumstances, for the acts of the owner of the cattle and the goods clerk at Talegaon under section 3 (b) of Act XI of 1890, though they may have no knowledge as to how the animals were carried?

(2) Is the Wadi Bundar goods station a place accessible to the public, when the Company's orders are that men on business alone should be admitted there?

The High Court answered the first question in the negative, and the second in the affirmative.

Act XI of 1890 is aimed at the individual who actually practices the cruelty, and it was not intended by the Legislature to make a master penally liable for the act of his servant.

done in the course of the servant's employment, and certainly not when the act is done contrary to orders of the master.

[26 Bom. page 641]

(A.) **EMPEROR vs. WALLI MUSSAJI.**

Gambling—Prevention of Gambling Act (Bom. Act IV of 1887), section 8—Power of seizing money "found therein"—Interpretation.

The power of seizing money found in a gaming-house, under section 8 of Bombay Act IV of 1887, does not extend to money found on the persons of those who may at the time be in such gaming-house.

[26 Bom. page 785.]

(B.) *In re* **BAL GANGADHAR TILAK.**

Criminal Procedure Code (Act V of 1898), sections 489, 195, and 476—Practice—Procedure—Sanction to prosecute—Stay of criminal proceedings pending disposal of civil suit—High Court—Revision.

The High Court is competent, in the exercise of its revisional power under section 439 of the Criminal Procedure Code (Act V of 1898), to interfere with an order made by a subordinate Court under section 476 of the Criminal Procedure Code (Act V of 1898), directing the prosecution of any person for the offences referred to in that section.

The High Court in this case refused to stay criminal proceedings directed by a subordinate Court under section 476 of the Criminal Procedure Code (Act V of 1898), until an appeal in the civil suit in connection with which the criminal charges were made had been decided.

[27 Bom. page 84.]

(C.) **EMPEROR vs. VARJIVANDAS.**

Criminal Procedure Code (Act V of 1898), sections 428 and 439—Presidency Magistrate—Discharge of accused person under section 209 of Criminal Procedure Code (Act V of 1898)—Order of discharge set aside by High Court and order made that accused be arrested and committed for trial at the Sessions of the High Court—Practice—Procedure—Sufficient ground for committing for trial, what is—Jurisdiction—Revisional Jurisdiction of High Court

Under sections 439 and 428 of the Criminal Procedure Code, the High Court has jurisdiction

tion to set aside an order of discharge passed by a Presidency Magistrate, if such preliminary be necessary, and to direct that a person improperly discharged of an offence, be arrested and forthwith committed for trial.

The fact that by section 437 of the Criminal Procedure Code (Act V of 1898), the High Court in its revisional jurisdiction may exercise all the powers given to it as a Court of Appeal (by section 423, except (paragraph 4), the power of converting a finding of acquittal into one of conviction seems to point to the conclusion that all other powers not expressly excluded may be exercised by the High Court as a Court of Revision.

The words in section 209 of the Criminal Procedure Code, "sufficient ground for committing," mean not sufficient ground for convicting, but refer to a case in which the evidence is sufficient to put the accused on his trial, and such a case arises when credible witnesses make statements, which, if believed, would sustain conviction. It is not necessary that the Magistrate should satisfy himself fully of the guilt of the accused before making a commitment. It is his duty to commit when the evidence for the prosecution is sufficient to make out a *prima facie* case against the accused, and he exercises a wrong discretion if he takes upon himself to discharge an accused in the face of evidence which might justify a conviction.

[27 Bom. page 130.]

(D.) **IN THE MATTER OF GOVERNMENT vs. DHAN DAS MEGHJI.**

Criminal Procedure Code (Act V of 1898), section 195—Small Cause Court—Registrar of Small Cause Court—Sanction to prosecute granted by Registrar—Revocation of sanction—Chief Judge can revoke it as a public officer—Jurisdiction of Small Cause Court to revoke the sanction—Presidency Small Cause Courts Act (XV of 1882), section 85—Criminal Procedure Code (Act V of 1898), section 195.

The Registrar of the Court of Small Causes has authority, under section 195, clause (1) (a) of the Criminal Procedure Code (Act V of 1898), to grant a sanction for the prosecution of an offence under section 182 of the Indian Penal Code (Act XLV of 1860) as the public officer concerned.

It is competent to the Chief Judge of the Court of Small Causes, to whom the Registrar is by law subordinate, acting as a public servant, to revoke the sanction granted by the Registrar. But it cannot be revoked by the Small Cause Court composed of one or more Judges.

[27 Bom. page 135]

(A.) **EMPEROR vs. SHERUFALLI ALLIBHOY.**

Criminal Procedure Code (Act V of 1898), sections 234 and 235—Number of charges—Same transaction.

The fact that offences are committed at different times does not necessarily show that they may not be so connected as to fall within section 235 of the Criminal Procedure Code (Act V of 1898). The occasions may be different, but there may be a continuity and a community of purpose. The real and substantial test by which to determine whether several offences are so connected as to form the same transaction depends on whether they are so related to one another in point of purpose, or as cause and effect, or as principal and subsidiary acts as to constitute one continuous action.

The accused was tried at one trial for three offences: (1) for having in his possession on the 9th October, 1902, certain stencil plates for the purpose of counterfeiting Hubbock & Co.'s trade-mark on two kegs of paint (section 486 of the Indian Penal Code); (2) for having, on or about the 7th October, 1902, sold 12 kegs of paint to which a counterfeit trade-mark was affixed (under section 486 of the Indian Penal Code), and (3) for having in his possession for sale, on or about the 9th October, 1902, certain kegs of paint, purporting to be Hubbock's paint, having a counterfeit trade-mark (under section 486). He was convicted and separately sentenced for such offences. He appealed, contending that the trial was illegal, inasmuch as he had been charged at one trial with offences which were not connected together so as to form the same transaction, under section 235 (1) of the Criminal Procedure Code (Act V of 1898):

Held, dismissing the appeal, that the trial was not illegal. There was a community and also a continuity of purpose in the possession and the sale—the possession of the instruments was the cause, the possession of the kegs and their sale the effect, and both the possession and the sale had one intention, and aimed at one result, namely, that of deceiving buyers into purchasing what was not the genuine article of Hubbock & Co.

[25 Mad. page 624.]

(B.) **KING-EMPEROR vs. AYYA ANNASAMY AIYAR.**

Penal Code (Act XLV of 1860), section 143—Unlawful assembly—Defence by accused persons of property in their possession.

Paddy belonging to a society, to which the first accused belonged, was stored in a granary in a street. It was found as a fact that this

paddy had been in the possession of the first accused for some time prior to 5th November, 1899, and was in his possession on that date. Complaint, on 5th November, 1899, attempted, as treasurer of the society, to forcibly take possession of the paddy with his servants, whereupon all the accused resisted him, and maintained the possession of the first accused, some blows being struck. On a charge being preferred against the accused for rioting:

Held, that no offence had been committed.

[25 Mad. page 627.]

(C.) **KING-EMPEROR vs. ALEXANDER ALLAN.**

Madras District Municipalities Act (Act IV of 1884), section 68 (3)—Madras District Municipalities Amendment Act (Act III of 1897), section 49—"Lands used solely for agricultural purposes"—Liability to tax.

By sub-section (3) of section 63 of the Madras District Municipalities Act, 1884, as amended by the Madras District Municipalities Amendment Act, 1897, lands used "solely for agricultural purposes" are exempted from the enhanced rates of taxation that may be imposed in certain cases under that sub-section:

Held, that lands on which potatoes, grain, vegetables, etc., are grown, as well as pasture lands, are used "solely for agricultural purposes" within the meaning of the sub-section.

[25 Mad. page 659.]

(D.) **SANGILIA PILLAI vs. THE DISTRICT MAGISTRATE OF TRICHINOPOLY.**

Criminal Procedure Code (Act V of 1896), section 476—"Judicial Proceeding"—Records of case called for by District Magistrate in his executive capacity.

Though an order passed after records have been called for, for any of the purposes specified in section 435 of the Code of Criminal Procedure, may be a "judicial proceeding" for the purposes of section 476 (as to which the Court gave no ruling), where a District Magistrate called for such records in his executive capacity to see whether an application for an enquiry into the conduct of a police constable should be granted, and passed an order thereon sanctioning his prosecution.

Held, that there was no judicial proceeding within the meaning of section 476, and that the order must be set aside.

[25 Mad. page 667.]

(A.) KING-EMPEROR *vs.* THAM-MANA REDDI.

Criminal Procedure Code (Act V of 1898), section 250—Frivolous or vexatious accusations—Case instituted on “information given to a Magistrate”—Information to a Village Magistrate—Discharge of accused—Order awarding compensation—Validity.

A Village Magistrate is not a Magistrate within the meaning of section 250 of the Code of Criminal Procedure; and where a case has been instituted in consequence of a complaint made to a Village Magistrate, who sent a report to the police, who submitted a charge sheet, the person who complained to the Village Magistrate cannot be ordered, under section 250, to pay compensation to the accused if the latter are discharged.

[25 Mad. page 671.]

(B.) JOHN MARTIN SEQUEIRA *vs.* LUJA BAI.

Criminal Procedure Code (Act V of 1898), section 195 (4)—Sanction to prosecute.

Clause (4) of section 195 of the Code of Criminal Procedure applies only to cases in which, at the time of granting sanction to prosecute, the offender is uncertain or unknown. Where there is no doubt as to whom the prosecution is to be directed against, the offender should be named.

[25 Mad. page 726.]

(C.) KING-EMPEROR *vs.* C. SRINIVASAN.

Indian Penal Code (Act XLV of 1860), sections 417, 511, 468—Attempting to cheat and forgery—Application to University for duplicate certificate by person not entitled—Offence.

S held a Matriculation certificate which had been issued to him by a University. C had failed to pass the Matriculation examination. The Registrar of the University received a letter purporting to be signed by S, stating that his certificate had been lost, and requesting that a duplicate might be issued. Enclosed with the letter was what purported to be a

certificate by the headmaster of a local school, corroborating the statement as to the loss and supporting the application for the issue of a duplicate. This document had not, in fact, been written by the headmaster, and S had not in fact lost his Matriculation certificate. C was charged with cheating and forgery to commit cheating. The Deputy Magistrate found, on the evidence, that the writer of the application for a duplicate certificate was the accused, and convicted and sentenced the accused on both charges. The Sessions Judge, on appeal, altered the offences to those of attempting to cheat and forgery to commit cheating and reduced the sentence. Subject to these modifications he dismissed the appeal. On a revision petition being filed in the High Court:

Held, that the charge of cheating must fail, inasmuch as there was no proof that the deception practised by the accused on the Registrar of the University had caused harm or damage to him or to the University which he represented. Nor was it shown that the accused, in applying for the duplicate certificate, had any intention of causing wrongful gain to himself or wrongful loss to the University, to whom he had paid a fee greater than the cost price of the certificate. The charge of forgery also failed, for, assuming that accused had fabricated the headmaster's certificate, it was not shown that he had done so fraudulently or dishonestly and with intent to cause damage or injury to the public or to any one. The question before the Court was not as to his intended use of the certificate subsequently. Even if he had such an intention this mere preparation did not amount to an attempt to commit an offence within the meaning of section 511 of the Indian Penal Code.

[25 Mad. page 729.]

(D.) KING-EMPEROR *vs.* GOPALA-SAMY.

Indian Penal Code (XLV of 60), section 424—Dishonest removal of property to avoid distraint—Distraint for arrears of rent under the Rent Recovery Act—Absence of presumption in favour of its legality—Onus of proof on prosecution to prove legality—Conviction in absence of such proof—Illegality.

Where a distraint is made under the Rent Recovery Act for arrears of rent, there is no presumption that it is legally made, and if persons are charged with having dishonestly removed property to avoid it, the prosecution must prove that it was a legal distraint. In the absence of such proof, persons who have resisted the distraint or have removed their property to avoid it, cannot be convicted of an offence, inasmuch as they had a right of private defence of their property unless the distraint was legal.

[26 Mad. page 14]

(A.) **EMPEROR vs. EDWARD
WILLIAM SMITHER.**

**Criminal Procedure Code (Act V of 1898),
sections 423 (2), 537—Trial by jury—
Misdirection—Verdict and order of acquittal—
Appeal against acquittal—Jurisdiction
of High Court to consider the evidence—
Evidence of accomplices.**

In a charge against an Inspector of Salt and Akhbar of extortion and bribery in a Court of Session, the first witness for the prosecution deposed that when he complained to the accused of delays which were taking place in weighing salt, the accused told him he ought to make the customary present of Rs. 100 or Rs. 50 according to the amount of salt to be weighed. The witness stated that he had refused to pay the bribe at that time, but that on the following day, when the accused stated that the weighing would only be properly proceeded with, if the present were made, he consented, and the accused agreed to send his peon (who was charged with abetment) for the money. According to the witness, the peon came to his shop and was paid Rs. 50 by his accountant by his order and in his presence, and in the presence of two other persons who were in the employment of the witness. The prosecution evidence, if true, only showed that these two other persons had witnessed the transaction without taking any part in it. The accountant and the other two persons were called and gave evidence as second, third and fourth witnesses, respectively, for the prosecution. Some entries in the account-books were relied on in support of the evidence of the witnesses, but they were challenged by the accused as false entries, and they were, in fact, discredited by the High Court. The writer of them was called as the fifth prosecution witness, and they had been made after the alleged transaction was over. The Sessions Judge, in his charge to the jury, warned them against accepting the evidence of accomplices without corroboration in material particulars. He said that the first and second witnesses were certainly accomplices, and that the third, fourth and fifth witnesses had put themselves practically in the same position as accomplices, and that their evidence also required corroboration before the jury could act on it. The jury returned a verdict of "not guilty," and the Sessions Judge sentenced the accused upon an appeal being preferred by the Public Prosecutor against the acquittal, on the ground of misdirection:

Held, that as regards the first and second witnesses, the charge was accurate; but that the description of the third, fourth and fifth witnesses was a misdirection.

Held, further, that it was not obligatory on the High Court, in such circumstances, to order further enquiry or a retrial, and that the High Court could consider the evidence, and if, after so doing, it formed the opinion that the evidence could not, in any proper view of the case, support a conviction, it would not alter or reverse the order of acquittal.

Queen-Empress vs. Nagan Lal (I. L. R., 14 Bom., 115) approved; Elabee Bukah's case [5 South. W. R. (Cr.) 80] followed; Wafadar Khan vs. Queen-Empress (I. L. R., 31 Cal., 555), and Ali Fakir vs. Queen-Empress (I. L. R., 35 Cal., 230) commented on.

[26 Mad. page 38.]

(B.) **THANDRAYA MUDALI vs.
EMPEROR.**

Evidence Act (I of 1872), section 24—Confession caused by promise—Village Magistrate—Person in authority—Appeal from conviction by jury—Misdirection.

Two days after a dacoity had been committed in a certain village, T. went to the Village Magistrate of that village, who was enquiring into the dacoity, and requested him to report that T. had not been concerned in the dacoity. The Village Magistrate replied that there was already a hue and cry against T, but that if T. spoke the truth, he would consult the Head constable and arrange that T. should be taken as a witness. T. at first denied all knowledge of the dacoity, but ultimately made a confession. T. was charged with others, with having committed the dacoity, and this confession was deposed to by the Village Magistrate. The Sessions Judge, in his charge to the jury, made no reference to the relevancy or otherwise of the confession under section 24 of the Evidence Act, and he said that if the confession was true, it was enough to warrant the conviction of the accused. The jury returned a verdict of guilty, and the accused was sentenced. On an appeal being preferred on the ground of misdirection:

Held, that the Village Magistrate was a person in authority within the meaning of section 24 of the Evidence Act, and that as the arrangement promised by him before the confession was made, was obviously intended to be one that would save the accused from prosecution if he would confess, the confession was irrelevant under that section. Also, that the misdirection was a material and important one, likely to lead to an erroneous verdict, and that a new trial must take place.

[26 Mad. page 41.]

(A.) ALAGIRISAMY NAIDU vs.
BALAKRISHNASAMI
MUDALIAR.

Criminal Procedure Code (Act V of 1898), sections 435, 437—Petition by complainant for retrial of accused—After discharge—No notice to accused—Orders by Sessions Judge directing further enquiry—Revision petition to High Court—Jurisdiction—Necessity for notice before order passed to the prejudice of accused.

A person charged with having committed criminal breach of trust was discharged, whereupon the complainant petitioned the Sessions Judge, under section 435 of the Code of Criminal Procedure, to direct a retrial of the case. Notice of the application was not given to the accused. The Sessions Judge, acting under section 437, ordered a further enquiry to be made. On a criminal revision petition being preferred by the accused in the High Court against that order:

Held, that it was competent to the High Court to revise the order, and that, without laying down a general rule that the omission to give notice of such an application renders an order under the section bad, the order must be set aside as it had not been shown that in this case there was any difficulty in giving notice, or that there was any reason why the general rule should not be followed that an order should not be made to a man's prejudice without giving him an opportunity for being heard.

[26 Mad. page 43.]

(B.) H. K. BEAUCHAMP vs. G. M. J.
MOORE.

Indian Penal Code (Act XLV of 1860), section 500—Defamation—Criminal Procedure Code (Act V of 1898), section 198—Person aggrieved—Defamation of subordinate officers of Municipality—Complaint by President—Maintainability.

A newspaper published articles which, for the purposes of the point of law to be determined, were assumed to be defamatory. These related to the conduct of certain subordinate officers of the Madras Municipal Commission. A complaint was lodged by the President of the Commission in respect of the alleged defamation, it being contended on behalf of the complainant that, inasmuch as by the Madras Municipal Act, the President is responsible for the efficient discharge of their duties by his subordinate officers, his conduct and administration had been impugned by the articles.

Held, that assuming for the purposes of the question under consideration that the statements complained of were defamatory of the

subordinate officers of the Municipal Health Department, they were not defamatory of the complainant; and that the complainant was not a "person aggrieved" within the meaning of section 198 of the Code of Criminal Procedure.

[26 Mad. page 49.]

(C.) NATAKALA PATTIAVADU AND
ANOTHER, PETITIONERS.

Code of Criminal Procedure (Act V of 1898), section 552—Order for restoration of possession of immoveable property—Conviction of accused on charge of criminal trespass—No finding of use of criminal force—Legality of order for restoration.

Certain persons were convicted of having committed criminal trespass on a piece of land, under section 447 of the Indian Penal Code. There was no finding that they had used criminal force, or that the complainant had been dispossessed of the land by such force. An order was subsequently made, which purported to be under section 552 of the Code of Criminal Procedure, directing the accused to restore possession of the land. On a revision petition being preferred against this order:

Held, that as there was no finding that criminal force had in fact been used, or that complainant had been dispossessed of the land by it, and as criminal force was not an ingredient of the offence for which the accused had been convicted, the order was made without jurisdiction.

[26 Mad. page 55.]

(D.) IN THE MATTER OF PALANI
PALAGAN.

Indian Penal Code (Act XLV of 1860), section 198—Charge of giving false evidence—Contradictory statements by witness before same Magistrate in the course of one and the same trial, on two different days—Conviction—Legality.

On 18th January, 1900, the accused deposed before a Magistrate that he had seen P. and others gambling in a certain place. The deposition was read over to the accused, and acknowledged by him to be correct. On 2nd February he was cross-examined, in the same case, before the same Magistrate, and he then deposed that he did not know P. and had never seen him gambling. He was then convicted and convicted under section 198 of the Code of Criminal Procedure for giving false evidence, in that he made two contradictory statements, one of which he either knew or believed to be false, or did not believe to be true. On the question being raised, whether the conviction was legal, or

it was illegal, by reason of the fact that the contradictory statements were made before the same Magistrate and in the course of one and the same trial :

Held, per BENSON, J. (to whom the case was referred)—That the conviction was legal.

Per MOORE, J.—As no rule can be laid down to the effect that the contradictory statements must have been made at different inquiries or trials (to render a person liable to conviction) the conviction could not be held to be illegal and should, consequently, not be interfered with in revision.

Per BHABHYAM AYYANGAR, J.—The conviction was bad in law. No statement made by a witness in a deposition can be regarded as a completed statement until the deposition is finished, and corrected, if necessary; for till then every statement is liable to be corrected, corrected, varied, or qualified, and until his cross examination is finished, neither the whole nor any portion of his deposition becomes evidence. The whole deposition must be read and construed as one, and if a later statement in it is contradictory to or at variance with a prior statement, the statement made by the witness must be taken to be the earlier statement as subsequently modified, or the subsequent statement itself, if it intentionally contradicts and thus retracts the earlier :

Habibullah vs. Queen-Empress (I. L. R., 10 Cal., 937) considered.

[26 Mad. page 98.]

(A) ERANHOLI ATHAN vs.
KING-EMPEROR.

Criminal Procedure Code (Act V of 1898), sections 439 and 476—Jurisdiction of High Court to interfere when a Court has taken action under section 476 of the Criminal Procedure Code.

Where a Court has taken action under section 476 of the Code of Criminal Procedure, the High Court, as a Court of Revision, has no power to interfere under section 476.

The reasons for the decision in *Queen-Empress vs. Srinivasulu Naidu* (I. L. R., 21 Mad., 124) are not applicable to the amended code.

[36 Mad. page 116.]

(B) In re PAREE KUNHAMMED.

Criminal Procedure Code (Act V of 1898), section 195—Petition to revoke sanction.

A person whose prosecution had been sanctioned by a Sub-Magistrate, petitioned the Special Assistant Magistrate for its revocation. The Special Assistant Magistrate declined to interfere, on the ground that as the Sub-Magistrate had had judicial evidence before him, and had also held the necessary

enquiry before granting sanction, the necessary conditions had been fulfilled, and it was not for him, at that stage, to usurp the functions of a Court trying the petitioner for the offence :

Held, that it is the duty of the authority giving sanction or upholding it, under section 195, to go into the merits of the application for sanction, with reference to the evidence before it, which is relied on as justifying the according of sanction. Unless there is sufficient *prima facie* evidence and a reasonable probability of conviction, the Court giving the sanction or upholding it will not be properly exercising the discretion vested in it by law.

[26 Mad. page 124.]

(C.) EMPEROR vs. RAVALU
KESIGADU.

Madras Abkari Act (I of 1886) section 34
—Power of officer in one circle to arrest offenders in another.

An officer of the Salt and Abkari department belonging to circle A, received certain information and entered circle B, and, under section 34 of the Madras Abkari Act, arrested an offender in the latter circle. The Magistrate who, in due course, tried the offender, held that the officer's powers of arrest were restricted to his own circle, and acquitted the accused, though he believed the prosecution evidence as to an offence having been committed. Upon an appeal being preferred against the acquittal :

Held, that the order of acquittal was wrong and must be set aside : also that the question whether the officer who effected the arrest was acting within, or beyond, his powers in making the arrest did not affect the question whether the accused was or was not guilty of the offence with which he was charged.

[36 Mad. page 125.]

(D) KRISHNASAMI PILLAI
vs. EMPEROR.

Criminal Procedure Code (Act V of 1898), sections 288, 285—Misjoinder of charges—Objection first taken on appeal—Same transaction.

A person was convicted on three charges, namely : (1) of abetting the falsification of a document (an account-book); (2) of fraudulently destroying and secreting documents, and (3) abetting criminal breach of trust, no objection on the ground of misjoinder being taken before the Sessions Judge. The only manner in which the alleged falsification and destruction were connected was that the account-book and the document were both in the custody of the accused; who thus had opportunity to falsify the one and destroy the

other. It was not suggested that the account-book was falsified in order to conceal the fact that documents had been destroyed, or that documents had been destroyed in order to prevent the particular falsification from being detected.

Held, that the offences charged did not constitute one series of acts so connected together as to form the same transaction within the meaning of section 235 of the Code of Criminal Procedure. Also, that the misjoinder could not be treated as an irregularity curable under section 537 and that the conviction must be set aside.

Suleramaniam Ayyar vs. King-Emperor (I. L. R., 36 Mad., 61) followed.

[26 Mad. page 127.]

(A.) IN THE MATTER OF
BYRAVALU NAIDU.

Criminal Procedure Code (Act V of 1898), sections 250, 388. (2)—Compensation in respect of vexatious complaint—Sentence of imprisonment on non-production of sureties and on complainant's plea of inability to pay—Legality.

A Deputy Magistrate, having held that a complaint was vexatious, ordered the complainant to pay compensation under section 250 of the Code of Criminal Procedure. He ordered the following order:—"The complainant is unable to produce any sureties and pleads inability to pay the compensation. He is awarded 30 days' simple imprisonment. No attempt was made to levy the amount of the compensation."

Held, that the order was invalid, whether it were passed under section 250 (2) or section 388 (3) of the Code of Criminal Procedure. Where an order to pay compensation has been made under section 250, the Magistrate cannot make an order for imprisonment on the mere intimation by the person who is directed to pay the compensation that he is unable to do so under section 388 (2), the issue of a warrant for the levy by distress of the amount awarded as compensation is a condition precedent to the carrying out of the sentence of imprisonment.

[26 Mad. page 130.]

(B) RAGHUANTHA PANDARAM
vs. EMPEROR.

Criminal Procedure Code (Act V of 1898), section 528—Order by Sub-Divisional Magistrate transferring case from one Sub-Magistrate to another—Order by District Magistrate cancelling that order and re-transferring the case—Legality.

A District Magistrate has no power to cancel an order made by a Sub-Divisional

Magistrate, directing the transfer, under section 528 of the Criminal Procedure Code, of a case from the file of one Sub-Magistrate to that of another Sub-Magistrate, and to direct the retransfer of the case to the file of the Sub-Magistrate from whom it was transferred.

[26 Mad. page 137.]

(C.) V. SHANMUGAM CHETTY
vs. PENNAPPA MUDALY.

Criminal Procedure Code (Act V of 1898), sections 195, 485—Order by Sessions Judge staying proceedings, pending reference to High Court for orders on proceedings relating to grant of sanction—Prosecution proceeding in Court outside jurisdiction of Sessions Judge—Legality.

Sanction was accorded by a Second-class Magistrate in the Sessions Division of South Arcot for the prosecution of A. on various charges. A then applied to the Deputy Magistrate of Cuddalore (in the same Sessions Division), who confirmed the sanction. A charge was laid against A. in the Court of a Second-class Magistrate in the Sessions Division of Chingleput. A, however, petitioned the Sessions Judge of South Arcot to revise the sanction and stay proceedings until his petition should be disposed of, and the Sessions Judge passed an order staying proceedings pending the disposal of the petition. On a criminal Revision petition being presented to the High Court:

Held, that the order was *ultra vires*.

[26 Mad. page 139.]

(D.) *In re* CHENNANAGOND.

Criminal Procedure Code (Act V of 1898), sections 435, 439—Jurisdiction of High Court under Criminal Procedure Code to revise order according to sanction which has been granted by a Civil Court.

The High Court has no jurisdiction, under sections 435 and 439 of the Code of Criminal Procedure, to revise an order passed by any Court other than a Criminal Court under clause (b) or (c) of sub-section (1) of section 195 of the Code of Criminal Procedure, pending sanction to institute a prosecution, or an order passed under sub-section (b) of section 195, revoking or refusing to revoke a sanction which has been given, or granting a sanction which has been refused.

It may be open to the High Court, under section 622 of the Code of Civil Procedure, to revise such proceedings of a Civil Court in cases which come within the terms of that section.

[26 Mad. page 188.]

(A.) *In re* ARUMUGA TEGUNDAN.

Criminal Procedure Code (Act V of 1898), sections 145, 526—Jurisdiction of High Court to transfer a case pending disposal under section 145.

A case under section 145 of the Code of Criminal Procedure is a "criminal case" and the High Court has jurisdiction to transfer it, both under section 526 of the Code of Criminal Procedure and Article 29 of the Letters Patent *re* Pandurang Govind Pujari (I. L. R., 25 Bom., 179) not followed.

[26 Mad. page 189.]

(B.) *In re* PACHAIAMMAL.

Criminal Procedure Code (Act V of 1898), section 195—Prosecution sanctioned by competent authority—Trial by another Magistrate in pursuance of sanction—Competency of Court to question propriety of sanction.

Where sanction has been accorded under section 195 of the Criminal Procedure Code by a competent Court, and a prosecution is instituted in pursuance thereof, it is not competent to the Court, which is trying the case, to question the propriety or legality of the sanction in respect of an offence of the kind mentioned in section 195, which is alleged to have been committed in any proceeding in the Court by which the sanction was granted.

[26 Mad. page 190.]

(C.) *In re* MUTHUKUDAM PILLAI.

Criminal Procedure Code (Act V of 1898), section 195—Sanction to prosecute—Computation of the period of six months—Starting point—Date of original sanction and not of Appellate order.

The period of six months during which sanction to prosecute remains in force under section 195 (b) of the Code of Criminal Procedure, is to be computed from the date of the original order granting sanction and not from that of a final order of an Appellate Court declining to revoke it.

[26 Mad. page 191.]

(D.) *EMPEROR vs. CHERRATH CHOVI KUTTI.*

Evidence Act I of 1872, section 155 (3)—Statements previously made by witnesses—Inadmissibility as substantive evidence.

Two persons made statements to the effect that C. and another had robbed them, and

caused hurt while doing so. One statement was made to their employer and the other to the Head-constable. C. was subsequently charged, and these two persons were called as witnesses for the prosecution, but they then denied that C. was one of the men who had assaulted them. Their previous statements were filed, but neither the employer nor the Head-constable was called to depose to the terms of the statements which the witnesses were said to have made:

Held, that the former statements referred to, and which implicated the accused, could be used only under section 155 (3) of the Evidence Act, for discrediting their evidence and not as substantive evidence against the accused.

[26 Mad. page 192.]

(E.) *VENKATESA AYYANGAR.*

Criminal Procedure Code (Act V of 1898), section 195—Grant of sanction to prosecute—Failure to decide that a *prima facie* case has been made out—Legality of sanction.

Application was made to a Second-class Magistrate for sanction to prosecute a person on a charge of abetment of giving false evidence in a judicial proceeding. The Magistrate held an enquiry and examined three witnesses, and then refused to accord sanction. Application was then made to the Sub-Divisional Magistrate who granted sanction. In doing so, he did not hold that a *prima facie* case had been made out, or that there was a probability of securing a conviction: He expressed the view that it was essential that the truth of the matter should be threshed out and, for that reason, sanctioned the prosecution as that appeared to be the only course by which it could be decided, whether or no the very serious offence charged had been committed.

Held, that this was no ground for granting sanction, or for setting aside the order of the Second class Magistrate refusing sanction.

[26 Mad. page 243.]

(F.) *PATTIKADAN UMMARU vs. EMPEROR*

Criminal Procedure Code (Act V of 1898), sections 418, 586—Trial by jury—for offence triable by jury—Verdict of acquittal—Opinion of jury of guilt in respect of offence not triable by jury—Conviction—Appeal on facts.

Two persons were charged, as first and second accused, before a Court of Session, with robbery (under section 392 of the Indian Penal Code), and first accused was also charged with, having caused grievous hurt in the course of the robbery, (under section 397). Both offences are triable, and the accused

were, in fact, tried by a jury, who by their verdict, acquitted both of the accused of the charges framed under the sections referred to, but found first accused guilty of voluntarily causing grievous hurt—an offence which is triable, not by a jury but by assessors. The Sessions Judge acquitted both accused in respect of the charges under section 392 and section 397, but convicted first accused of having voluntarily caused grievous hurt, under section 325. Against that conviction first accused preferred this appeal, when it was objected that, inasmuch as the trial had been held before a jury, the appeal lay on matter of law only, and not on question of fact?

Held, per BENSON, J.—That the conviction of the first accused for causing grievous hurt was not one by a jury but by the Judge, who treated the finding of the jury in regard to the grievous hurt as the opinion of assessors. An appeal, therefore, lay on the facts as in the case of *Muthusami Pillai vs. Queen-Empress* (Appeal No. 215 of 1895, unreported), and in *Empress vs. Mahim Chander Rai* (I. L. R., Cal., 765).

Per BHASHYAM AYYANGAR, J.—That the effect of section 238 of the Criminal Procedure Code is to invest a jury trying an offence triable by a jury with authority to find, as an incident to such trial, that certain facts only are proved in the trial, which facts constitute a minor offence and return a verdict of guilty of such offence though such minor offence be not triable by a jury. And that a Sessions Judge may thereupon record judgment convicting the accused of such minor offence, although he is not charged with it and tried on such a charge by the Sessions Judge with the aid of the jurors as assessors. The jury having found first accused guilty of causing grievous hurt, and the Judge having given judgment convicting him of the same, an appeal lay only on a point of law, as the accused had been convicted in a trial by jury.

[26 Mad. page 249.]

(A.) **REGULA BHERMAPPA vs EMPEROR.**

Penal Code (Act XLV of 1860), sections 97, 107, 104—Private defence—"Protect a right"—Unlawful assembly.

The villagers belonging to C. walked into religious procession, through a part of the village of K. carrying with them a vessel containing water which purported to be consecrated. The villagers of K. objecting, obstructed the procession, whereupon the members of it resisted the obstruction and used some violence, causing grievous hurt to one of the obstructors and hurt to others of them. The members of the procession were charged with and convicted of being members of an unlawful assembly, possessing deadly weapons

and causing grievous hurt, and their convictions were upheld on appeal. On revision:

Held, that the convictions were wrong. The accused were justified, in the circumstances, in exercising their right of private defence: and the harm inflicted was not more than appeared to have been necessary for the purpose of self-defence.

[26 Mad. page 396.]

(B.) **SEVAKOLANDAI vs. AMMAYAN.**

Criminal Procedure Code (Act V of 1898), section 528.—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty theft triable under Regulation IV of 1821.

The jurisdiction, which a District or Sub-Divisional Magistrate has, under section 528 of the Code of Criminal Procedure, to transfer a criminal case from the file of a Village Magistrate, is limited to the cases (namely, those relating to petty thefts) which a Village Magistrate is empowered by Regulation IV of 1821 to try and punish.

[26 Mad. page 421.]

(C.) **VEMURI SESHANNA.**

Criminal Procedure Code (Act V of 1898), section 423 (b)—Conviction of two accused and order against both accused to pay Court and process-fees in equal shares—Acquittal of one accused on appeal—Order by Appellate Court for entire Court and process-fees—Legality—"Enhancement of sentence."

A Magistrate convicted two accused, and in addition to the sentences which he passed on them, ordered them to pay the Court and process-fees in equal shares. The Appellate Court acquitted one of the accused and ordered the other accused (whose conviction was affirmed) to pay the whole amount of the Court and process-fees.

Held, that the order of the Appellate Court was legal under section 423 (d) of the Criminal Procedure Code, and did not amount to an enhancement of sentence within the meaning of section 423 (b). Fees ordered to be paid under section 31 (IV) of the Court-Fees Act are recoverable as if they were fines imposed by the Court, but they are not part of the fine imposed as a punishment for the offence: *Queen-Empress vs. Tangavali Chetti* (I. L. R., 22 Mad. 153) and the High Court Ruling, 30th July, 1910 (5 M. H. O. R., app. 39) distinguished.

[26 Mad. page 454.]

(A) CHEKUTTY vs. EMPEROR.

Criminal Procedure Code (Act V of 1898), section 285—"Same transaction"—Kidnapping of child and assault, at a later date, on mother—Conviction—Validity.

An accused was charged and tried at one trial with the offences of kidnapping, wrongful confinement, and assault, and convicted. The case for the prosecution was that the accused had kidnapped, and wrongfully kidnapped a boy, and that when the boy's mother, a day or two afterwards, went to the house of the accused and asked that the boy might be allowed to return to her, the accused assaulted the mother. The conviction was upheld by the Sessions Court. On a revision petition being preferred in the High Court:

Held, that the charge of assault ought to have been brought separately and tried separately. The kidnapping and the assault were not committed in one series of acts so connected together as to form one transaction. The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. Even assuming that on the facts of this case the process of "taking" or "enticing" was going on at the time of the alleged assault on the mother, it was doubtful whether the assault was one of a series of acts so connected together as to form the same transaction, and the charge of assault should have been brought and tried separately.

[26 Mad. page 463.]

(B) *In re* BALAMBAL.

Penal Code (Act XLV of 1860), section 498—*"Enticing away"* a woman—Charge of abetment against the woman enticed—Validity.

Where a man has been convicted of enticing away a woman, under section 498 of the Indian Penal Code, the woman who was enticed away by him cannot be guilty as an abettor.

Whether a woman could be convicted of abetting the taking away of herself within the meaning of section 498—*Quære*.

[26 Mad. page 464.]

(C.) SINGARAJU NAGABHUSHANAM.

Penal Code (Act XLV of 1860), section 500—Defamation—True statement that complainant had been convicted of theft and sent to jail—Conviction—Validity.

An accused, who was the trustee of a temple, was convicted of defamation, the alleged de-

famatory statement being that the complainant, who performed the worship in a temple, had been convicted and sent to jail for the theft of idols belonging to the temple. At the time when the statement was made, an appointment was in question in connection with the temple.

Held, on revision, that the accused was justified in making the statement either in the interest of the temple, or because the statement was no more than a publication of the result of proceedings in a Court of justice.

[26 Mad. page 465.]

(D.) MEYYAN vs. EMPEROR.

Criminal Procedure Code (Act V of 1898) sections 391, 407—Sentence of whipping by Second-class Magistrate—Appeal—Application for postponement of sentence till hearing of appeal—Refusal—Validity.

When a Second-class Magistrate passes a sentence of whipping only, without imprisonment, he has no power to postpone the execution of the sentence pending an appeal by the accused. It is only when whipping is added to imprisonment in an appealable case that the whipping may, and ought to, be postponed under section 391 of the Criminal Procedure Code.

[26 Mad. page 467.]

(E. GUZZALA HANUMAN vs. EMPEROR.

Penal Code (Act XLV of 1860), sections 395, 411—Charges of dacoity and receiving stolen property—Charge to jury—Possession of stolen property—Misdirection.

On the trial of an accused, before a Judge and jury at a Court of Sessions for dacoity and receiving stolen property, the Judge, in his charge to the jury, directed them that the fact of a stolen shirt having been found in possession of the accused two months after the dacoity, was sufficient to justify them in convicting the accused of the dacoity:

Held, on appeal, that this was a misdirection. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the jury and should not have been put to them in the positive way which the Judge adopted.

[26 Mad. page 469.]

(A) KANNOOKARAN KUNHAMAD vs. EMPEROR.

Criminal Procedure Code (Act V of 1898), section 106—Order for security to keep the peace on convictions for offences not necessarily involving a breach of the peace—Validity.

Certain accused were convicted of theft, of mischief, and of being members of an unlawful assembly. They were sentenced to imprisonment and were further required to give security to keep the peace. There was no finding that a breach of the peace had been committed by them.

Held, on revision, that the order requiring them to give security for keeping the peace must be set aside, as none of the offences for which they had been convicted necessarily involved a breach of the peace.

Whether such an order might be made in a case in which a person is not accused of an offence involving a breach of the peace, but there is nevertheless an express finding that a breach had been committed—*Quære*.

[26 Mad. page 470.]

(B.) EMPEROR vs. VENKANNA PRA BHU.

Forest Act (Madras Act V of 1882), section 21 (a)—“Clearing”—Removal of trees or shrubs—Conviction where no evidence of such removal—Validity.

The word “clearing,” as it is used in section 21 (a) of the (Madras) Forest Act of 1882, means some thing in the nature of the removal of trees or shrubs. Certain accused were convicted of an offence under the section, but there was no evidence on the part of the prosecution to show that there had been any removal of trees or shrubs by the accused, or that cultivation of the land in question could not have been carried on without such removal.

Held, that there was no evidence that the accused had committed an act prohibited by section 21.

[26 Mad. page 471.]

(C.) BALAGAL RAMACHARLU vs. EMPEROR.

Criminal Procedure Code (Act V of 1898), sections 112, 118, 144, and 145—Notice to give security for three months—Order to give security for twelve months—Validity—Discretion to proceed under section 107 or sections 144 and 145.

Where a notice is issued under section 112 of the Code of Criminal Procedure to a defend-

ant to show cause why he should not give security to be of good behaviour for three months, the Magistrate has no power to order security to be given for a longer period.

Where a defendant is found by the Magistrate to be in possession of land about which a dispute occurs, the Magistrate is not bound to act under sections 144 and 145, but has a discretion to proceed either under section 107 or under sections 144 and 145 of the Code.

Dolegobind Chowdhry vs. Dhanu Khan (I. L. R., 25 Cal., 559, distinguished).

[26 Mad. page 475.]

(D.) ABDUL AZKEZ SAHIB vs. CUD. PAPAH MUNICIPALITY.

District Municipalities Act (Madras)—Act IV of 1884 as amended by (Madras) Act III of 1897, section 269—Money due as tax, fee, toll or other payment—Money due on toll—Contract—Applicability of section.

Money due under a contract entered into with a Municipality for the right to collect tolls in consideration of a money payment does not fall within any of the provisions of section 369 of the District Municipalities Act, 1884, and a contractor, who fails to pay what is due under such a contract, cannot be convicted and fined under that section.

[26 Mad. page 477.]

(E) KALIMUTHU vs. EMPEROR.

Criminal Procedure Code (Act V of 1898), section 435 (4)—Refusal by Sessions Judge to commit for trial—Subsequent commitment by District Magistrate after taking up the case *suo motu*—Legality.

A Second-class Magistrate, after enquiring into a charge of murder, discharged the accused. A revision petition was then presented to the Sessions Judge, requesting that the accused might be committed for trial at the Sessions. The Sessions Judge dismissed the petition, holding that the Magistrate's reasons for discharging the accused were good. At a subsequent date the District Magistrate took up the case *suo motu* and directed the commitment of the accused for trial at the Sessions Court on a charge of murder. On reference being made to the High Court for orders:

Held, that the commitment that was made under the District Magistrate's order was invalid and must be set aside. Under clause 4 of section 435 it was not competent to the District Magistrate to entertain an application for the commitment being ordered when the Sessions Judge had refused such an order. Nor could he act *suo motu*. The reason for the prohibition in the section was to avoid a conflict between the orders of two District authorities having co-ordinate powers and that reason applied equally to cases in which the authorities act *suo motu*.

[26 Mad. page 478.]

(A.) SAMIAYYA vs. EMPEROR.

Criminal Procedure Code (Act V of 1898), section 423—Power “to reverse the finding and sentence”—Reversal by Deputy Magistrate of an order acquitting accused on a charge of theft—Validity.

A Deputy Magistrate has no power, under section 423 of the Code of Criminal Procedure, to reverse an order, acquitting an accused person of a charge of theft. The words “reverse the finding and sentence” in clause (b) of that section mean reverse the finding upon which a conviction is based, and do not empower the Appellate tribunal (or at any rate an Appellate tribunal other than the High Court) to reverse or set aside an acquittal.

Queen-Empress vs. Johanulla (I. L. R., 23 Cal., 975) explained.

[26 Mad. page 480.]

(B.) KARUPPANA SERVAGARAN vs. SINUA GOUNDEN.

Criminal Procedure Code (Act V of 1898), section 195 (b)—Sanction for prosecution—Appeal against order according sanction—Disposal of appeal after expiration of six months for order according sanction—Application for extension of time—“Good cause.”

Sanction was accorded for a prosecution, and an appeal was preferred against the order, which was not disposed of until after the expiration of six months from the date of the order. Upon an application being made for an extension of time for the prosecution of the accused:

Held, that good cause had been shown for the extension.

[26 Mad. page 481.]

(C.) SUBUDHI RANTHO vs. BALARAMA PUDE.

Penal Code (Act XLV of 1860), section 424—Dishonest removal by tenants of crops—Ryots holding on varam tenure—Crops in possession of ryots—No taking out of possession—Offence.

If ryots holding land on varam tenure remove crops for the purpose of protecting them

from injury or damage owing to delay or refusal on the part of the zemindar to perform his part in the harvesting or division, such a removal would not be dishonest within the meaning of section 424 of the Indian Penal Code. But where it is proved that the crops have been removed dishonestly or fraudulently, an offence is committed under section 424, even though the zemindar, under the terms of the tenancy, acquires no property in the share due to him until the ryots have delivered it to him.

[26 Mad. page 554.]

(D.) VIJJIARAGHAVA CHARIAR vs. EMPEROR.

Indian Penal Code (Act XLV of 1860), sections 158, 296.—Wantonly giving provocation with intent to cause riot—Disturbing a religious assembly—Religious procession on highway—Legality—Chanting hymns by ordinary worshippers.

By a decree in a civil suit, the Tengalai sect in a certain district were declared entitled to hold certain offices connected with a temple, and as such office-holders it was their duty to recite certain hymns in processions. The right of the Vadagalai sect as ordinary worshippers were not affected by the decree, but the Vadagalais were ordered not to interfere with the Tengarais in the recital of the hymns otherwise than as ordinary worshippers. Subsequently to this decree, a religious procession was being conducted along a public highway. The Tengarais walked in front, chanting the hymns. In the rear, at such a distance that the Tengarais were not likely to hear them, the Vadagalais followed, also chanting hymns. A complaint was in consequence laid by a member of the Tengalai sect, charging the Vadagalais (1) with wantonly giving provocation with intent to cause riot, and (2) with voluntarily disturbing an assembly lawfully engaged in religious worship:

Held, that neither offence had been committed. *Per* DAVIES, J. (without deciding whether religious procession in public streets in India are “lawful” or not).—The Vadagalais had not exceeded their rights as ordinary worshippers and had not intended to provoke a breach of the peace, and were consequently not guilty of an offence under section 153. Moreover, no “disturbance” had been proved within the meaning of section 296. *Per* SUBRAHMANYA AYYAR, J.—The object of section 296 of the Indian Penal Code presumably is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively; and not when they engage in worship in an unquiet place open

to all the public as a thoroughfare. The user of a highway for religious worship is altogether wanting in lawfulness. There is no peculiar right known to the law as a right of procession. Though the law accords to members of a procession no recognition in their collective capacity, yet the fact that a number of persons use a highway together for some common purpose does not detract in any way from such use being lawful; but as the circumstances attending a procession may, in consequence of their being inconsistent with the paramount idea of passage, be of such a character as to render the user by the processionists otherwise than lawful and as carrying on worship on a highway is of that character, it cannot be affirmed that the Tenglais on the occasion in question constituted an assembly engaged in worship lawfully within the meaning of section 296 of the Indian Penal Code. *Per BENSON, J.*—The contention that the Tenglais were not "lawfully" engaged in religious worship because they were engaged in it on a highway, could not be accepted. There is nothing illegal, in India (where highways have from time immemorial been used for the passing of religious processions), in a procession or assembly engaging in worship while passing along a highway. If it were necessary to refer the origin of the use of highways for religious processions to a dedication of the highway to such use, such a dedication could reasonably be presumed, history, literature and tradition showing that such processions have formed a feature of the national life from the earliest times; and it being unreasonable to suppose that a dedicatory would make a reservation against religious processions, which would be wholly opposed to the sentiment of the community. A religious procession is entitled to the special protection given by the Penal Code to assemblies engaged in religious worship. In the present case, however, no "disturbance" had been proved, and consequently no offence had been committed. *Per BHASHYAM ATYANGAR, J.* (at the first hearing the Chief Justice dissenting)—Inasmuch as the Vadagalais had acted as ordinary worshippers which they were not prohibited from doing under the decree, the act complained of was not illegal within the meaning of sections 183 and 48 of the Indian Penal Code. With regard to the charge under section 296, the accused had not been shown, on the facts as found, to have voluntarily caused disturbance to an assembly lawfully engaged in the performance of religious worship. No assembly can be so "lawfully engaged" (within the meaning of that section) on a highway, unless it be established or can be reasonably presumed that the dedication of the highway was subject to such use. User of a highway as a place of worship is not the legitimate user of it as a highway. The conviction was wrong on this ground and on the ground that in fact no disturbance had been proved.

[24 Mad. page 592.]

(A.) IN THE MATTER OF
GOVINDU.

Criminal Procedure Code (Act V of 1898), sections 195, 238 to 239—Joinder of offences and accused—Preliminary enquiry—Power of Sessions Court to try offenders separately where jointly committed for trial—section 195—Sanction to prosecute—Notice to accused—Necessity.

The sections of the Code of Criminal Procedure which relate to joinder of charges (including section 239) refer to the trial of the accused. The ruling in *Subrahmantha Ayyar vs. Emperor* (1. L. R., 25 Mad., 81) cannot be extended to a preliminary enquiry held by the Magistrate committing a case to a Sessions Court, so as to render the commitment itself illegal, because there was misjoinder of offences or of offenders. In such a case, the Sessions Judge, if he considers it necessary, can frame charges against and try the accused separately. There is no hard-and-fast rule that notice must be given in all cases to an accused person before sanction is accorded for his prosecution.

[26 Mad. page 598.]

(B.) RAMAKRISHNA REDDI vs.
EMPEROR.

Criminal Procedure Code (Act V of 1898), sections 269 (3), 309—Sessions Judge sitting with jury—Charges of theft and administering drug—Opinion of only two jurors taken as assessors on second charge—Validity.

At the trial of an accused, before a Sessions Judge and a jury, for theft in a building (an offence triable by a jury) and for administering a noxious substance (an offence triable by assessors), the Judge took the verdict of the jury on the former charge, and took the opinion of only two of them (assessors) on the latter:

Held, that, under sections 269 (3) and 309 of the Code of Criminal Procedure, the Judge should have taken the opinion of all the jury as assessors on the latter charge, and that his failure to do so was not an "omission" or "irregularity" to which section 537 applied.

[26 Mad. page 607.]

(C.) ADAMS vs EMPEROR.

Extradition (Act XXI of 1879), sections 4 and 6—Criminal Procedure Code, section 4—Indian Penal Code, section 40—Offence—Jurisdiction of Magistrate in Mysore to try and convict an European British subject for an act amounting to an offence under the Mysore law, but not an offence under the Indian Penal Code.

An European British subject was charged and tried before, and convicted by, a Magistrate.

class Magistrate and Justice of the Peace appointed, under the Extradition Act, 1879, in and for the territories of Mysore. The act for which he was so tried and convicted (namely, being in possession of mining materials), constituted an offence under the Mysore Mines Regulation, but was not an offence under the Indian Penal Code. It was contended, in revision, in the Madras High Court, that the conviction was wrong on the ground that a Justice of the Peace appointed under the Extradition Act has no authority to deal with an offence committed by an European British subject against a law of the Mysore State :

Held, that the Magistrate had power to try the accused, or to commit him for trial in the Madras High Court. *Per* SIR ARNOLD WHITE, C.J.—Section 8 of the Act of 1879 extending to European British subjects in States in India in alliance with His Majesty the law relating to offences and to criminal procedure for the time being in force in British India ought not to be read so as to restrict the powers of the Governor-General which are declared by section 4 and which may be delegated to his officers under section 6. The word "offences," as used in section 6 of the Act of 1879, is not restricted to offences as defined by section 40 of the Indian Penal Code. Nor is it restricted to any definition of "offence" to be found in the Code of Criminal Procedure, although, as a matter of fact, the present definition of "offence" in the Code of Procedure [section 4 (a)], which is the same as that contained in the General Clauses Act, is sufficiently wide to include the wrongful act with which the accused in the present case was charged.

[26 Mad. page 640.]

(4.) RAYAN KUTTI *vs.* EMPEROR.

Criminal Procedure Code (Act V of 1898), section 531—Proceedings in wrong place.

Section 531 of the Code of Criminal Procedure applies to a case where a Magistrate who has authority to commit a case for trial, does so, but has not territorial jurisdiction in the place where the offence to be tried is alleged to have been committed.

[26 Mad. page 656.]

(B.) EROMA VARIAR *vs.* EMPEROR.

Criminal Procedure Code (Act V of 1898), sections 105 (7), 407 (2)—Court to which appeals ordinarily lie—Refusal to accord sanction—Appeal to Magistrate who has been directed and empowered to hear appeals under section 407 (2).

A Magistrate who has been directed and empowered to hear appeals under the provi-

sions of section 407 (2) of the Code of Criminal Procedure, is not the "Court to which appeals ordinarily lie" within the meaning and for the purposes of section 105 (7) of the Codes (BENSON, J., dissenting).

[26 Mad. page 126.]

(C.) KRISHNASAMI PILLAI *vs.* EMPEROR.

Criminal Procedure Code, sections 238, 235—Misjoinder of charges—Objection first taken on appeal—Same transaction.

A person was convicted on three charges, namely—(1) of abetting the falsification of a document (an account-book); (2) of fraudulently destroying and secreting documents, and (3) abetting criminal breach of trust, no objection on the ground of misjoinder being taken before the Sessions Judge. The only manner in which the alleged falsification and destruction were connected was that the account-book and the document were both in the custody of the accused, who thus had opportunity to falsify the one and to destroy the other. It was not suggested that the account-book was falsified in order to conceal the fact that documents had been destroyed, or that documents had been destroyed in order to prevent the particular falsification from being detected :

Held, that the offences charged did not constitute one series of acts so connected together as to form the same transaction within the meaning of section 235 of the Code of Criminal Procedure. Also, that the misjoinder could not be treated as an irregularity curable under section 537, and that the conviction must be set aside : *Subramania Ayyar vs. Emperor* (I. L. R., 25 Mad., 61), followed.

[26 Mad. page 394.]

(D.) SEVAKOLANDAI *vs.* AMMAIYAN.

Criminal Procedure Code (Act V of 1898), section 528—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under Regulation IV of 1821.

The jurisdiction which a District or Sub-Divisional Magistrate has, under section 528 of the Code of Criminal Procedure, to transfer a criminal case from the file of a Village Magistrate, is limited to the cases (namely, those relating to petty thefts) which a Village Magistrate is empowered by Regulation IV of 1821 to try and punish.

[26 Mad. page 419.]

(A.) IN THE MATTER OF RAMAYA
NAIKA.

Penal Code (Act XLV of 1860), section 187

—Rendering assistance to a public servant—Refusal to sign search-list by person who attended search under Abkari law—Liability—Criminal Procedure Code (Act V of 1898), section 103 (1)—Party called upon to attend and witness a search.

A person was called upon by an Abkari Inspector to attend a search held under section 103 of the Code of Criminal Procedure, and did so. He, however, refused to sign the search-list when it was prepared. On a charge being preferred against him under section 187 of the Indian Penal Code of intentionally omitting to assist a public servant in the execution of his duty:

Held, that the accused was not guilty of an offence under section 187. Assuming that a person called upon to attend and witness a search, under section 103 of the Code of Criminal Procedure, is under a legal obligation to attend the search and sign the search-list, the "assistance" which a person is bound, by the earlier part of section 187 of the Penal Code, to render is *ejusdem generis* with the various forms of assistance referred to in the latter part of the sections. It must have some direct personal relation to the execution of the duty by the public officer. The signing of the search-list required by section 103, is an independent duty which is imposed on the witness, whereas the word "assistance," as used in the section, implies that the party who assists is doing something which, in ordinary circumstances, the party assisted could do for himself.

[27 Mad. page 52.]

(B.) DORASAMI PILLAI vs.
EMPEROR.

Penal Code (Act XLV of 1860), section 353

—Using criminal force to deter a public servant—Entry by Police on premises of suspected person at night—Assault on police.

A police constable, at midnight, entered upon the premises of a person who was regarded by the police as a suspicious character, and knocked at his door to ascertain if he was there, whereupon he came out and abused and pushed the constable and lifted a stick as if he were about to hit the constable with it. On a complaint being preferred under section 353 of using criminal force to deter a public servant in the execution of his duty:

Held, that offence had not been committed. The constable was not engaged in the execution of his duty as a public servant, and was technically guilty of house-trespass, and his action was calculated to cause annoyance to the inmates of the house and was insulting

to the accused, who was justified in causing the slight harm which he had inflicted on the constable. The latter could not be regarded under section 99, as acting in good faith under colour of his office as his action was not authorized by any police circular or order.

[27 Mad. page 54.]

(C.) IN THE MATTER OF KALA GAVA
BAPIAH (ACCUSED).

Criminal Procedure Code (Act V of 1898), sections 195, 196, 197, 215, 436—Sanction—Notice to accused—Reference to High Court—Revisional powers.

Section 215 of the Code of Criminal Procedure is not applicable to a case in which a commitment in question has not been made under any one of the four sections therein specified, but has been made under the directions of the High Court under section 528 (1) IV. An order of a Sessions Judge or District Magistrate passed under section 436, directing commitment, may be quashed by the High Court in the exercise of its revisional powers, though not under section 215. But an order passed by the High Court itself under section 526 cannot be so revised.

Sanction accorded by Government under section 197 is not null and void, for the reason that no notice was given to the accused to show cause why it should not be given. It is a matter left to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution.

There is a marked distinction between the classes of offences dealt with in section 195, clauses (b) and (c), and those dealt with in section 197. A Court granting sanction under section 195 (b) and (c) does so in connection with offences committed in or in relation to any proceeding in such Court, and the Court, therefore, acts in its judicial capacity in granting the sanction on legal evidence. But the Government in according or withholding sanction, under section 197 (for the prosecution of a public servant in respect of an offence alleged to have been committed by him as such public servant) acts purely in its executive capacity and the sanction need not be based on legal evidence.

The Criminal Procedure Code does not prescribe any particular form for the sanction required by section 197, as it does in the case of a sanction accorded under section 195.

[27 Mad. page 59.]

(D.) IN THE MATTER OF TAMMI
REDDI.

Criminal Procedure Code (Act V of 1898), section 250—Order for compensation.

The question whether the discretion given by section 250 of the Code of Criminal Procedure

sure has been rightly exercised, must always depend upon the facts of the particular case. If the false charge is of such a nature that a prosecution is necessary on grounds of public policy, it may well be that a Magistrate would exercise his discretion wrongly if, instead of sanctioning a prosecution, he awarded compensation. If the false charge is one which does not render it necessary on grounds of public policy that a prosecution should be sanctioned, a Magistrate who makes an order for compensation cannot be said to exercise his discretion wrongly.

[27 Mad. page 61.]

(A.) BANGARU ASARI vs.
EMPEROR.

Criminal Procedure Code (Act V of 1898), sections 199, 238—Charge of kidnapping and conviction for enticing married woman—No complaint by husband—Legality.

The provision in section 199 of the Code of Criminal Procedure, that no Court shall take cognizance of an offence under section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, means a complaint by the husband of an offence under section 498, not any complaint made by the husband.

An accused was charged with kidnapping or abducting a woman under section 366, Indian Penal Code, but the Sessions Judge, holding that the prosecution had failed to prove either kidnapping or abduction, convicted the accused, on the evidence, of an offence under section 498. In doing so, he purported to act under section 238 of the Code of Criminal Procedure. The complaint before the Court had been made by the husband, but was only general in terms:

Held, that the conviction was bad.
Empress vs. Kallu (I. L. R., 5 All., 233) followed and approved.

[27 Mad. page 124.]

(B.) IN THE MATTER OF SUBAM-
MA (ACCUSED).

Criminal Procedure Code (Act V of 1898), section 195 (b)—Power of superior Court to revoke sanction, after complaint lodged.

P. obtained sanction from a Stationary Sub-Magistrate to prosecute S. for offences under sections 211 and 193, Indian Penal Code, alleged to have been committed before that Magistrate. P. did not prefer any complaint in pursuance of the sanction, but the police, relying on it, preferred a charge-sheet to the Joint Magistrate against the accused in respect of the alleged offence under section 211. The Joint Magistrate struck the case

off his file, giving as his reason for so doing that he, *suo motu*, quashed the Sub-Magistrate's sanction under section 195 (b) of the Code of Criminal Procedure.

Held, that the Joint Magistrate's action in striking the case off his file was legal and proper, though the reason given by him for so doing was erroneous and his act in quashing *ultra vires*. A Joint Magistrate, though authorized under section 407 (2) to entertain appeals preferred by persons convicted on a trial by the Stationary Magistrate, is not the Court to which appeals from the Court of the Stationary Magistrate ordinarily lie, within the meaning of section 195 (7). The Court to which the Court of the Stationary Magistrate is, within the meaning of section 195 (6) and (7) subordinate is that of the District Magistrate:

Froma Variar vs. Emperor (I. L. R., 26 Mad., 656, and *Sadhu Lall vs. Ram Churn, Post.* (I. L. R., 30 Cal., 394) followed. The Joint Magistrate could not, therefore, revoke the sanction given by the Stationary Sub-Magistrate, the District Magistrate alone having the power to revoke or grant a sanction given or refused by the Stationary Sub-Magistrate. Nor was it competent to a District Magistrate, under section 407, to direct that applications for revoking or granting a sanction given or refused by a Sub-Magistrate may be presented to the Joint Magistrate.

Whether the Court authorized to exercise such a power under sub-section (6) can exercise it *suo motu* as if it were a Court of revision, where no application has been made to it either to give a sanction which has been refused or to revoke a sanction which has been given—*Quære*.

The course pursued by the police, in sending a police report in respect of the offence was contrary to law, but whether, on the strength of the sanction accorded to P, a police officer or other stranger might have preferred a complaint against S—*Quære*.

The mere fact that a complaint has been made, in pursuance of sanction, will be no bar to a Court competent under sub-section (6) to deal with an application for revoking such sanction, entertaining such application and disposing of it according to law, even if the complaint in pursuance of the sanction has been preferred to itself.

✓ [27 Mad. page 127.]

(C.) MALLAPPA REDDI AND
ANOTHER vs. EMPEROR.

Penal Code (Act XLV of 1860), section 211—Preferring false charge—Statement not reduced to writing by Police officer.

A person was convicted, under section 211 of the Indian Penal Code, of having preferred a false charge. It appeared that the accused had stated to a Police officer that certain of the prosecution witnesses had stolen his goats and that he had made this statement intending to set the criminal law in motion against those persons. The statement had not been

reduced to writing in accordance with the requirements of section 154 of the Code of Criminal Procedure. On its being contended that there was no evidence of a false charge within the meaning of section 211:

Held,—(1) that the test is—did the person who makes the charge intend to set the criminal law in motion against the person against whom the charge is made; (2) that (it being clear from the evidence that the accused did so intend,) the fact that the statement made by the accused to the Police officer had not been reduced to writing in accordance with section 154 of the Code of Criminal Procedure did not prevent the statement made from being a false charge within the meaning of that section.

✓

[27 Mad. page 129.]

(A.) CHENNA MALI GOWDA *vs.*
EMPEROR.

Penal Code (Act XLV of 1860), section 211
—Preferring a false charge—“Charge”
made to Village Magistrate—Sustainability.

An accusation of murder made to a Village Magistrate (who, under section 13 of Regulation XI of 1816, has authority to arrest any person whom he suspects of having committed the murder of a person whose body is found within his jurisdiction) is a “charge,” within the meaning of section 211 of the Indian Penal Code, even though it does not amount to the institution of criminal proceedings and even though no criminal proceedings follow it owing to the police referring it as false on investigation.

[25 All. page 31.]

(B.) EMPEROR *vs.* MAHABIR
SINGH.

Acts, 1860, XLV (Indian Penal Code), section 423—“Dishonestly”—“Fraudulently”—False statement of price in a sale-deed made with the view of defeating the claims of pre-emptors.

Held, that the making of a false statement in sale-deed of immovable property as to the consideration for the sale, such statement being made for the purpose of preventing any person who might have a right of pre-emption in respect of property sold from coming forward to assert his right of pre-emption, is an offence which falls within the definition contained in section 423 of the Indian Penal Code.

[25 All. page 126.]

(C.) HARBANS RAI *vs.* CHUNNI
LAL.

Criminal Procedure Code, section 195—
Revision—Practice—Sanction to prosecute—Application for sanction refused by Magistrate—Independent application subsequently made to the Sessions Judge.

Certain persons who had been discharged after a complaint against them of the offences of kidnapping and extortion, applied to the Magistrate who had discharged them for sanction to prosecute the complainants. This application was refused by the Magistrate. The applicants then, instead of appealing or applying in revision to the Sessions Judge against the order of the Magistrate, made a fresh and independent application to the Sessions Judge for sanction to prosecute the complainants. The Sessions Judge declined to entertain this application. On application under section 195 of the Code of Criminal Procedure being made to the High Court against both the orders above referred to, the High Court declined to interfere on the ground that the applicants had not pursued their proper remedy in the Court below.

[25 All. page 128.]

(D.) EMPEROR *vs.* MADAR
BAKHSI.

Criminal Procedure Code, section 438—
Revision—Practice—Reference by District Magistrate questioning an order of acquittal.

The High Court will not ordinarily entertain a reference under section 438 of the Code of Criminal Procedure, the object of which is to have an order of acquittal passed by an inferior Court set aside.

[25 All. page 129.]

(E.) EMPEROR *vs.* RAMADHIN.
Act, 1860, XLV (Indian Penal Code), section 378—Theft—Human body not capable of being the subject of theft.

Held, that a human body, whether living or dead (except perhaps bodies or portions thereof, or mummies, preserved in museums or scientific institutions), cannot be the subject of theft as defined in section 378 of the Indian Penal Code.

[25 All. page 131.]

(F.) EMPEROR *vs.* SHIB SINGH.
Criminal Procedure Code, section 122—
Security for good behaviour—Sureties offered refused on the ground of their relationship to the person required to find security.

Where, on an order to find security for good behaviour, the Magistrate refused to

accept the sureties tendered on the sole ground that they were relations of the person against whom the order had been passed, it was held, that relationship to the person called upon to find security was, so far from being an objection, a most useful qualification in the persons tendered as sureties.

[25 All. page 132.]

(A.) **EMPEROR vs. IMTIAZAN.**

Criminal Procedure Code, section 198—Act No. XLV of 1860 (Indian Penal Code), section 495—Bigamy—Prosecution started at the instance of the second husband's brother—"Person aggrieved."

Held, that in respect of a prosecution for bigamy the brother of the second (bigamous) husband of the accused was not a "person aggrieved" within the meaning of section 198 of the Code of Criminal Procedure, *Queen-Empress vs. Bai Rukshmoni*, I. L. R., 10 Bom., 340, followed.

[25 All. page 165.]

(B.) **PRABHU LAL vs. RAMI.**

Criminal Procedure Code, sections 488, 489, 490—Maintenance—Agreement between the parties subsequent to the order for maintenance—Such agreement no bar to enforcement of order for maintenance so long as such order subsists.

Where an order for maintenance is passed under section 488 of the Code of Criminal Procedure, and the parties afterwards come to an agreement between themselves as to what is to be paid, the existence of such agreement will not of itself be a bar to the enforcement of the order for maintenance; but it will be the duty of the party chargeable, if he wishes to be relieved from the payment of the maintenance allowance, to bring such settlement to the notice of the Court and obtain a cancellation of the order for maintenance: *Rangamma vs. Muhammad Ali*, I. L. R., 10 Mad., 13, not followed.

[25 All. page 209.]

(C.) **EMPEROR vs. ALI.**

Criminal Procedure Code, section 198—Act No. XLV of 1860 (Indian Penal Code), sections 494 and 498—Jurisdiction—Complaint.

The husband of a woman who had left him, filed a complaint before a Magistrate, alleging facts which seemed to constitute the offence provided for by section 498 of the Indian Penal Code. In the course of the inquiry conse-

quent upon this complaint, it appeared that an offence falling under section 494 of the Code had been committed, and the Magistrate accordingly made an order of commitment under section 494 of the Code.

Held, that such commitment was not illegal. It was not necessary that the complainant should specify precisely the section under which the person complained against should be charged, and he had laid before the Magistrate matter which, if proved, would be sufficient to warrant a commitment under section 494. *In the matter of Ujjala Beira*, I. C. L. R., 523, approved.

[25 All. page 234.]

(D.) **HASAN SHAH vs. HARDEO SAHAI.**

Criminal Procedure Code, sections 196, 476—Sanction to prosecute—Order directing prosecution framed in the alternative held to be bad—Revision.

A District Magistrate having before him an application for the grant of sanction to prosecute a certain person for perjuries alleged by the applicants to have been committed by that person in the Court of the District Magistrate, passed an order in the following form:—"I, . . . District Magistrate, Bulandshahr, hereby charge you. . . that you on the 21st day of June, 1902, at Bulandshahr, in the course of the hearing of the appeal, *Shib Dayal vs. K. E.*, stated in evidence before this Court," etc., etc. (here follow the specific assignments) "or I sanction proceedings against you under section 182, Indian Penal Code, with giving false information," etc., etc. "I make the case over to B. Dipchand for disposal. B. Hardeo Sahai will furnish P. R. in Rs. 500, and one surety in like amount, to appear when called on."

Held, that this order being framed in the alternative, was a bad order and could not be acted upon.

[25 All. page 261.]

(E.) **EMPEROR vs. HUSAIN BAKHSI.**

Act, 1860, XLV (Indian Penal Code), section 216B—Definition—Meaning of the term "harbouring."

Held, with regard to the definition contained in section 216B of the Indian Penal Code, that the words, "assisting a person in any way to evade apprehension," are meant to point out some method *eiusdem generis* with those specified in the earlier portion of the section. They will not include the assisting of an accused person to escape by merely telling him to the police as to his whereabouts.

[25 All. page 262.]

(A.) **EMPEROR vs. GAJADHAR.**

Act, 1878, I (Opium Act), section 9—Possession of illicit opium—Custody of a locked box containing opium lawfully belonging to the owner of the box.

A locked box containing the stock of opium and books of a licensed vendor of opium, the key of which was kept by the owner, was found in the house of a person who lived next door to the shop of the opium-vendor, and it appeared that the opium-vendor, instead of taking his box home with him at night, was in the habit of leaving it with his neighbour for safe custody.

Held, that the custodian of the box could not be properly convicted of the offence of unlawful possession of opium, inasmuch as the possession of the opium was not his, but that of the legitimate owner.

[25 All. page 272.]

(B.) **EMPEROR vs. TOTA.**

Criminal Procedure Code, sections 110, 118—Security for good behaviour—Inquiry into sufficiency of security delegated to Tahsildar—Practice.

Held, that it is not competent to a Magistrate who has passed an order under section 118 of the Code of Criminal Procedure to delegate to another officer the inquiry into the sufficiency of the security tendered, but such inquiry must be made by the Court by which the original order was passed: *Queen-Empress vs. Pirithi Pal Singh*, Weekly Notes, 1898, p. 154, followed.

[25 All. page 273.]

(C.) **EMPEROR vs. BIDHYAPATI.**

Criminal Procedure Code, sections 107, 117—Security for keeping the peace—Evidence—Evidence of general repute not available in such cases.

It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute. Where a person is called upon to furnish security to keep the peace, evidence of general repute cannot be made use of to show that such person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity.

[25 All. page 315.]

(D.) **SAFDAR HUSAIN, IN THE MATTER OF THE COMPLAINT OF—**

Criminal Procedure Code, section 250—Frivolous accusation—Award of compensation to accused—Such award to be made by the order of discharge or acquittal and not by a separate order.

When a Magistrate, on finding a complaint to be frivolous or vexatious, thinks it right to award compensation to the complainant, he must do so by his order of discharge or acquittal. Where a Magistrate made such an order in a separate proceeding after the accused had been discharged, it was *held*, that his order was not merely irregular, but without jurisdiction.

[25 All. page 341.]

(E.) **CHURAMAN vs. RAM LAL.**

Criminal Procedure Code, section 522—Act No. XLV of 1860 (Indian Penal Code), section 350—Restoration of possession of immovable property—Use of criminal force.

To support an order under section 522 of the Code of Criminal Procedure, restoring possession of immovable property, it is necessary for the Court to find as a fact, not only that the person in whose favour such order is made was deprived of possession by an offence, but that such offence was attended by the use of criminal force: *Ram Chandra Borat vs. Jityandria*, I. L. R., 25 Calc., 434; and *Ishan Chandra Kalla vs. Dina Nath Badhak*, I. L. R., 27 Calc., 174, followed.

[25 All. page 375.]

(F.) **EMPEROR vs. GIRAND.**

Criminal Procedure Code, sections 123 and 340—Security for good behaviour—Reference to the Sessions Judge—Notice to be given of proceedings before the Judge to the persons required to find security.

Where, under section 123 of the Code of Criminal Procedure, reference is made to the Sessions Judge in the case of a person called upon by a Magistrate to find security for a term exceeding one year, it is expedient and highly desirable for the ends of justice, that a date should be fixed for the hearing of such reference, and that notice of such date should be given to the person concerned: *Jages Singh vs. Queen-Empress*, I. L. R., 23 Calc., 493; *Nakhi Lal Jai vs. Queen-Empress*, I. L. R., 27 Calc., 656.

Followed : *Queen-Empress vs. Ajudhia*, Weekly Notes, 1898, p. 60, and *Queen-Empress vs. Mutasaddi Lal*, I. L. R., 21 All., 107, referred to.

[25 All. page 534.]

(A.) **EMPEROR vs. GUR NARAIN PRASAD.**

Criminal Procedure Code, sections 195, 198 and 423—Powers of Appellate Court—Alteration of finding—Question whether accused is prejudiced by alteration—Act No. XLV of 1860, sections 182 and 500.

Held, that an Appellate Court, when it acts under section 423 (1) of the Code of Criminal Procedure and "alters the finding, maintaining the sentence," is not bound in respect of such altered finding by such conditions precedent, as, for example, sanction or complaint by the person aggrieved, as would be binding on a Court of first instance.

Hence, when in appeal from a conviction under section 182, the Appellate Court altered the conviction to one under section 500 of the Indian Penal Code, it was *held*, that this was within the competence of the Appellate Court, notwithstanding that there was in existence no complaint by the person aggrieved.

Held, also that, under the circumstances of the case, there was not so material a difference between the two offences, both arising out of the same facts, as would necessarily lead to the conclusion, that the accused had been prejudiced by the alteration of the finding by the Appellate Court.

[25 All. page 537.]

(B.) **MAHADEO KUNWAR vs. BISU.**

Criminal Procedure Code, sections 145 (5) and 435 (3)—Order of Magistrate on dispute as to possession of immovable property—Revision—Jurisdiction of High Court.

The order to which finality is given under sections 145 (5) and 435 (3) of the Code of Criminal Procedure must be an order which not only purports to be, but is in reality, an order under section 145, and has been passed with jurisdiction. Where the Court has exceeded its jurisdiction in making the order, it is null and void, and the High Court in the exercise of its revisional powers is competent to interfere with it : *Hurbullabh Narain Singh vs. Luchmeswar Prosad Singh*, I. L. R., 26 Calc., 188. In re *Pandurang Govind*, I. L. R., 24 Bom., 527, and *Agru Bank vs. Lctshman*, I. L. R., 18 Mad., 41, referred to.

Where a Magistrate, under circumstances which would apparently have justified his taking action under section 145 of the Code of Criminal Procedure, took action in fact under

section 107, and having passed an order seemingly under section 118, added, as it were, as an appendix to this order :—"Bisu Ahir put in possession under section 145, Code of Criminal Procedure"—it was *held*, that this order, passed without any of the procedure prescribed by section 145 being adopted, was more than an irregularity, and was an order passed without jurisdiction and liable to revision by the High Court : *Mohesh Sengar vs. Narain Bag*, I. L. R., 27 Calc., 181, and *Sakor Dusanth vs. Ram Pargas Singh*, 7 C. W. N., 174, referred to.

[25 All. page 545.]

(C.) **BHAGWANIA vs. SHEO CHARAN LAL.**

Criminal Procedure Code, section 488—Maintenance—Application for cancelment of order for maintenance—Jurisdiction.

Where it is sought, under section 488, sub-sections 4 and 5 of the Code of Criminal Procedure, to have an order passed under sub-section (1) of section 488 set aside, such application must be made to the Magistrate who passed the original order, or to his successor in office, who, and who only, has jurisdiction in the matter.

[26 All. page 144.]

(D.) **MAHARAJ TEWARI vs. HAR CHARAN RAI.**

Statutes 24 and 25 vic., cap. CIV., section 15—Criminal Procedure Code, sections 435 (c) and 145—High Court's powers of revision.

Held, that section 15 of the Charter Act, 24 and 25 vic., cap. CIV., does not over-ride section 435 of the Code of Criminal Procedure, so as to enable the High Court in the exercise of its powers of superintendence to interfere with an order passed by a Court having jurisdiction under Chapter XII of the Code, interference with which in revision is excluded by section 435 (c) : *Hurbullabh Narain Singh vs. Luchmeswar Prosad Singh*, I. L. R., 26 Calc., 188, and *Mahadeo Kunwar vs. Bisu*, I. L. R., 25 All., 537, referred to.

[26 All. page 177.]

(E.) **EMPEROR vs. MAHAMMAD HADI.**

Criminal Procedure Code, section 208—Procedure—Witness—Duty of Magistrate enquiring into a case triable by the Court of Sessions to summon and examine witnesses asked for by the accused.

The accused against whom an inquiry with regard to an alleged offence, under section 280 of the Indian Penal Code, was being held by

a Magistrate of the first class, asked the Magistrate to summon certain witnesses for the defence; but the Magistrate without summoning such witnesses passed an order committing the accused to the Court of Session.

Held, that the Magistrate was bound to take all such evidence as the accused was prepared to produce before him, and that the order of commitment was bad in law: *Queen-Empress vs. Ahmadi*, 1 L. R., 20 All., 264, followed.

[26 All. page 183.]

(A.) IN THE MATTER OF THE
PETITION OF RAM PADARATH.

Criminal Procedure Code, section 250—Complaint—Compensation for frivolous or vexatious complaint—Order for compensation dependent on existence of a "complaint."

Ram Padarath, a Civil Court chaprasi, made a report that, in endeavouring to execute a warrant for the arrest of a certain judgment-debtor, he had met with resistance from the judgment-debtor who had escaped. This report was laid before the District Judge who directed that the papers should be laid before the District Magistrate with a view to the institution of a case under section 225 (B) of the Indian Penal Code. Such proceedings were accordingly instituted; and the case came before the Joint Magistrate, who acquitted the accused and ordered that Ram Padarath should pay Rs. 50 as compensation to the judgment-debtor.

Held, that there being no complaint in the case within the meaning of section 4 of the Code of Criminal Procedure, the order awarding compensation was illegal: *Bharat Chandur Nath vs. Javed Ali Biswas*, 1 L. R., 20 Calc., 481, followed.

[26 All. page 189.]

(B.) EMPEROR vs. RAGHUNATH
SING.

Criminal Procedure Code, section 122—Security for good behaviour—Power of Magistrate to refuse to accept surety offered.

Held, that the fact that a proposed surety has on one occasion offended against the law and been punished for an offence under the Indian Penal Code does not of itself render such person for ever afterwards unfit to be surety for a party who is required to give security for good behaviour.

[26 All. page 190.]

(C.) IN THE MATTER OF THE
PETITION OF BASDEO.

Criminal Procedure Code, section 107—Security for keeping the peace—Evidence as to likelihood of breach of the peace.

Held, that the facts which might be taken to establish the probability of certain persons disturbing the public tranquillity at a particular annually recurring festival, would afford no ground after such festival had passed without the public tranquillity having been disturbed, for binding over such persons to keep the peace with a view to the possibility of their creating a disturbance at the next recurrence of the festival: *Uma Charan Santra vs. Bani Madhub Roy*, 7 C. L. R., 352, referred to.

[26 All. page 195.]

(D.) EMPEROR vs. FATTU.

Criminal Procedure Code, section 235—Charge not distinguishing separate offences alleged against accused—Charge held to be bad in law.

Certain persons, who were alleged by the prosecution to have committed three, if not four, separate dacoities in the course of the same night, were charged to the effect that they on or about the 12th December at Dabri, "committed dacoity and therefore committed an offence punishable under section 395 of the Indian Penal Code."

Held, that the charge ought to have specified each alleged dacoity separately, and that the form in which it was drawn, was not merely irregular but bad in law, and a new trial was ordered: *Subrahmanthi Appay vs. King-Emperor*, 1 L. R., 25 Mad. 61, referred to.

[30 Calc. page 485.]

(E.) NARAYAN CHANGA vs.
EMPEROR.

Trial by Jury—Procedure—Delivery of verdict—Verdict, partial record of—Criminal Procedure Code (Act V of 1898), sections 300, 301, 303—Prejudice—New trial.

Where, after the delivery of an unanimous verdict of the jury, convicting the accused of the charge of rioting in connection with certain land and the crops thereon, possession of

which was claimed by the complainant as well as by the accused, the foreman of the jury at tempted to add that "the land and the crops are all theirs" (meaning that they belonged to the accused), but was stopped by the Sessions Judge on the ground that the verdict was quite clear in its terms, and it was therefore unnecessary to hear anything further from them :

Held, that it was undesirable to stop the jury at such a stage of the proceedings, that the words the foreman attempted to add to the verdict were very material, and that the accused having been seriously prejudiced by the procedure adopted by the Sessions Judge, there should be a new trial.

[30 Calc. page 508.]

(A.) SURJYA KANTA ACHARJEE
vs. HEM CHUNDER CHOWDHRY.

Jurisdiction—Criminal Procedure Code (Act V of 1898), sections 145, 355, 356—Witness, attendance of—Process, refusal to issue—Magistrate, discretion of—High Court, power of interference by—Charter Act (24 and 25 Vict., c. 104); section 15—Proceedings under Chapter XII of the Criminal Procedure Code.

Where the refusal by a Magistrate to assist one of the parties to a proceeding under Chapter XII of the Criminal Procedure Code, in procuring the attendance of his witnesses, deprived that party of a hearing on the only question for the determination of the Court and so amounted to a denial of justice :

Held, that the Magistrate in refusing process acted without jurisdiction, *Madhub Chandra Tanti vs. Martin*, I. L. R., 30 Calc., 508 (note) referred to. The High Court in the exercise of general powers of supervision vested under 24 and 25 Vict., c. 104, section 15, has power to interfere in a case like this, even if it cannot, in strictness, be said that the Magistrate acted without jurisdiction. A mere refusal, however, to summon or examine a particular witness or witnesses cited by a party, in proceedings under Chapter XII of the Criminal Procedure Code, is not necessarily a ground for interference by the High Court. It cannot be laid down as a rule of law that proceedings under Chapter XII of the Criminal Procedure Code should be regarded, as to procedure, as summons cases: *Harendra Narain Singh Choudhry vs. Bhobant Pra Baruan* I. L. R., 11 Calc., 762, and *Ram Chandra Das vs. Manohur Roy*, I. R., 21 Calc., 29, explained.

[30 Calc. page 593.]

(B.) A. M. DUNNE vs. KUMAR
CHANDRA KISHORE.

Receiver—Party—Jurisdiction—Proceedings under section 145 of the Code of Criminal Procedure (Act V of 1898)—Possession of Receiver.

A Receiver appointed by the High Court cannot be made a party to a proceeding under section 145 of the Code of Criminal Procedure merely in his capacity of Receiver, and a Magistrate has no jurisdiction to interfere with him in respect of his possession of the estate, without the sanction of the Court, his possession being the possession of the Court. *Ex parte Cochrane*, L. R., 20 Eq., 282; *William Russell vs. The East Anglican Railway Company*, 8 Mac & G. 104, and *Ames vs. The Trustees of the Birkenhead Docks*, 20 Beav. 332, referred to. *Semble*. The Receiver can neither sue nor be sued, without the leave of the Court, *Miller vs. Ram Ranjan Chakravarti*, I. L. R., 10 Calc., 1014, referred to.

[30 Calc. page 643.]

(C.) MOTILAL PAL vs. THE CORPORATION OF CALCUTTA.

Adulteration—Mustard oil (as commercially known)—Sale "to the prejudice of purchaser"—Manufacture for sale—Calcutta Municipal Act (Bengal Act III of 1899), section 495.

Where a Food inspector purchased samples of mustard oil from the manufactory of the accused which, on analysis, were found to be adulterated with *til* oil, and the accused were convicted under section 495 of Bengal Act III of 1899 :

Held, that such adulterated oil, not being what is commercially known as mustard oil, and the adulteration being to the prejudice of the purchaser, the accused had been rightly convicted: *Baishtab Charan Das vs. Upendra Nath Mitra*, 3 C. W. N. 66, distinguished.

[30 Calc. page 690.]

(D.) SURENDRA NATH SARMA vs.
RAI MOHAN DAS.

Appeal—Restoration of property, order for Criminal Procedure Code (Act V of 1898), sections 517, 520.

An order by a Magistrate directing the restoration of property, in respect of which no offence has been found to have been committed, to the person in whose possession that property was found, is not an order under section 517 of the Code of Criminal Procedure,

and is therefore not open to appeal : *Basudeb Surma Gossain vs. Naziruddin*, I. L. R., 14 Calc., 834, *In re Annapurnabai*, I L. R., 1 Bom., 630, and *In re Devdutt Durgaprasad*, I. L. R., 22 Bom., 844, referred to.

[30 Calc. page 693.]

(A.) GOPINATH PATNAIK *vs.*
NARAIN DAS BANERJEE

Transfer—Withdrawal of case by District Magistrate—Inquiry or trial—Code of Criminal Procedure (Act V of 1898), sections 253, 528.

Where a case which was being tried by a Deputy Magistrate, who was about to frame charges against the accused persons, was withdrawn by the District Magistrate to his own file and dismissed under section 253 of the Criminal Procedure Code, on the ground that the accused, who were policemen, were protected by their warrants :

Held, that the case ought to have been left with the Deputy Magistrate to be disposed of, and that it was for him to determine whether the offence charged was made out or whether the police were protected by their warrants.

[30 Calc. page 721.]

(B.) W. R. FINK *vs.* THE CORPORATION OF CALCUTTA.

Receiver—Party to Criminal Proceedings—Leave of Court—"Owner"—Calcutta Municipal Act (Bengal Act III of 1899), sections 3, 320, 574.

A Receiver appointed by the High Court is not the "owner" of the property of which he has been appointed Receiver, within the meaning of section 3, clause (32) of Bengal Act III of 1899; nor can he be made a party to any suit or proceeding without the leave of the Court appointing him : *Dunne vs. Kumar Chandra Kisor*, I. L. R., 30 Calc., 593; 7 C. W. N., 390, referred to.

[30 Calc. page 822.]

(C.) BIRENDRA LAL BHADURI
vs. EMPEROR.

Charges, misjoinder of—Defective charge—Appeal—Trial by jury—Forgery—Using as genuine forged document—Cheating—Criminal Procedure Code (Act V of 1898), section 423—Penal Code (Act XLV of 1860), sections 467, 467—109, 468, 468—109, 471 and 417—511—Indian Registration Act (Act III of 1877), section 82.

It was alleged by the prosecution that the accused had forged the registration endorse-

ment and stamp on the back of a *kabula* by which he had sold certain lands to D, and that he had produced before a Sub-Registrar a forged mortgage-deed, whereby he purported to mortgage to D the identical land sold under the *kabula*; it was also alleged that the accused had produced the said mortgage deed, before the Secretary of a Loan Office, in order to induce that office to grant him a loan. The accused was tried in one trial on charges under sections 467, 467—109 and 468, 468—109 of the Penal Code with regard to the alleged forgery of the *kabula*; under section 82 of the Registration Act, and sections 467, 467—109 and section 471 of the Penal Code with regard to the mortgage-deed, and also on charges under sections 471 and 417—511 of the Penal Code with reference to the attempt to cheat the Loan Office. The accused was convicted under sections 467—109, 417—511 and section 471 of the Penal Code :

Held, on appeal—(i) That as the alleged forgery of the *kabula* and the presentation of the forged mortgage-deed to the Secretary of the Loan Office could not be said to be parts of the same transaction, there had been a misjoinder of charges; (ii) that the charge to the jury was defective, inasmuch as it did not show what the facts of the case were, what the evidence adduced was, or what was the case for the accused; (iii) that, inasmuch as the evidence on the record showed that there was a case which ought to be investigated by a jury, the accused should be re tried.

[30 Calc. page 905.]

(D.) PROFULLA CHANDRA SEN
vs. EMPEROR.

Sanction to prosecute—Public servant—Substantive offence—Abetment—Fresh sanction—Criminal Procedure Code (Act V of 1898) sections 195, 197, 230—Penal Code (Act XLV of 1860), sections 468, 468—109.

The Inspector-General of Registration, Bengal, wrote a letter to the District Registrar of Tippera, directing the prosecution of a Sub-Registrar on charges under sections 417 and 468 of the Penal Code. The Sub-Registrar was tried and convicted under section 468—106 of abetment of forgery for the purpose of cheating. At the trial it was contended on behalf of the accused that there could be no conviction for abetment when sanction had been given for prosecution for the substantive offence only.

Held, that the letter of the Inspector-General of Registration was a sufficient sanction to justify the conviction, and that no fresh sanction was necessary under section 230 of the Criminal Procedure Code.

[30 Calc. page 910.]

(A.) TARA PROSAD LAHA vs
EMPEROR.

"Complaint," meaning of—Prosecution for adultery or enticing away a married woman—Criminal Procedure Code (Act V of 1898), sections 4, clause (h), 199.

The word "complaint," referred to in section 199 of the Code of Criminal Procedure, means a "complaint," as defined by section 4, clause (h) of that Code: *Jatra Shekh vs. Rezat Shekh*, 1. L. R., 20 Calc., 483, distinguished.

[30 Calc. page 918.]

(B.) MAHOMED NUR vs. BIKKAN
MAHTON.

Evidence—Order unsupported by evidence—Criminal Procedure Code (Act V of 1898), section 147.

In proceedings under section 107 of the Criminal Procedure Code, the first party filed their written statement and Magistrate having declined to give the second party time to file their written statement, made an order under that section in favour of the first party without recording any evidence.

Held, that the Magistrate ought to have had some evidence in proof of the allegations contained in the written statement; and that there being no such evidence upon which the order could be supported, it should be set aside: *Haro Mohan Sardar vs. Gobind Sahu*, 7 C. W. N., 351, distinguished.

[30 Calc. page 921.]

(C.) KEDAR NATH SHAHA vs.
EMPEROR.

Court-fee stamp, sale of—"Sale"—Exchange—Transfer of stamp on promise that one of equal value would be returned—Court-fees Act (VII of 1870), section 34, clause (3).

Where a mukhtear who had purchased a Court-fee stamp for a client, transferred it to another client, the latter having agreed to return to the mukhtear another Court-fee stamp of the same value, and was convicted of an offence under section 34 of the Court-fees Act.

Held, that there had been no 'sale' of the stamp within the meaning of section 34 of the Court-fees Act (VII of 1870), and that the conviction should be set aside.

✓ [30 Calc page 923]

(D.) LOKENATH PATRA vs. SANYASI
CHARAN MANNA.

Complaint—Dismissal of complaint—Complainant, examination of—False charge—Criminal Procedure Code (Act V of 1898), sections 156, 159, 200, 202, 203—Penal Code (Act XLV of 1860), section 211—Jurisdiction of Magistrate.

A complaint was made to a Magistrate who, without examining the complainant, sent the petition of complaint, under section 156 of the Code of Criminal Procedure, to the Police for enquiry, and upon receipt of the Police report directed a Sub-Deputy Magistrate to make a preliminary inquiry into the case under section 159 of the Code, and on receipt of his report the Magistrate, not being satisfied with it, cross-examined the complainant and some of his witnesses, examined some witnesses sent up by the Police, and then dismissed the complaint under section 203 of the Code, and directed the prosecution of the complainant under section 211 of the Penal Code:

Held, that the order dismissing the complaint was illegal, the Magistrate having no jurisdiction to deal with the case or dismiss it under section 203 of the Criminal Procedure Code without complying with the requirements of the law as laid down in sections 200 and 202 of that Code.

[30 Calc. page 927.]

(E.) CORPORATION OF CALCUTTA
vs ADMINISTRATOR-GENERAL
OF BENGAL.

Administrator General of Bengal—Sanction to prosecute—Administrator to estate of deceased person—Public servant, offence by—Criminal Procedure Code (Act V of 1898), section 197—Calcutta Municipal Act (Bengal III of 1899), sections 320, 574.

The Administrator-General of Bengal, who was appointed by the High Court administrator to the estate of a deceased person, was served with a notice by the Calcutta Municipal Corporation under section 320 (i), clause (b) of Bengal Act III of 1899, requiring him to remodel a privy on certain premises belonging to that estate. In consequence of his not complying with the requisition, he was prosecuted under section 574 of the Act. At the trial it was contended that as the Administrator-General of Bengal was a public servant not removable from his office without the sanction of the Government of India, he could not, under the terms of section 197 of the Criminal Procedure Code, be prosecuted without the sanction of such Government:

Held, that the sanction of Government was not necessary for the institution of the prosecution.

cution, section 197 of the Criminal Procedure Code not being applicable to a case like the present: that the Administrator-General of Bengal was in charge of the premises, in respect of which the offence charged was said to have been committed, not by virtue of his office, but by virtue of his appointment by the Court as administrator to the estate of the deceased; and that he was charged with having committed the offence in the latter capacity: *Nando Lal Basak vs. N. N. Mitter*, I. L. R., 26 Calc., 852, followed.

[30 Calc. page 1084.]

(A.) SUNDAR MAJHI vs. EMPEROR.

Arbitrator—Public servant—Mischievous—Land-mark—Penal Code (Act XLV of 1860), sections 21, 434

The parties to a proceeding, under section 145 of the Criminal Procedure Code by mutual consent, referred the dispute as to the possession to the arbitration of A., and the Magistrate thereupon cancelled the proceeding under section 145. The arbitrator in order to define the boundary erected certain pillars, which were destroyed by the accused, and they were in consequence convicted under section 434 of the Penal Code:

Held, that the conviction was illegal, as A. was not an arbitrator within the definition of section 21, clause (6) of the Penal Code, nor was he a public servant authorised to fix the pillars within the meaning of section 434 of that Code.

[31 Calc. page 1.]

(B.) EMPEROR vs. JOGESHWAR PASSI.

Coroner, inquisition by—Commitment—Presidency Magistrate, power of, to enquire into a case committed by Coroner—Discharge or acquittal by Presidency Magistrate, effect of—Bail—Coroners' Act (IV of 1871), sections 24, 25, 26, 27, 29—Prisoners' Act (III of 1900), section 11—Criminal Procedure Code (Act V of 1898), sections 213, 214, 215, 477, 478, 498.

An inquisition drawn up by the Coroner of Calcutta under the Coroners' Act against an accused person, although it may have the effect of a valid commitment upon which the High Court in the exercise of its Original Criminal Jurisdiction may act, has not that effect until it has been accepted by the High Court, and the officers of the Crown have drawn up a charge in accordance with it.

Such a commitment by the Coroner does not of itself oust the jurisdiction of a Presidency Magistrate to inquire into, commit, or

try the case; and until the High Court has accepted such commitment, any order of acquittal or discharge made by such Magistrate in the case will be operative, subject to the discretion of the High Court whether it should take action upon the inquisition of the Coroner as an effective commitment: *Queen-Empress vs. Mohamed Rajudin* (I. L. R., 16 Bom., 159) referred to.

After a Coroner has drawn up an inquisition against a person and committed him to prison, the High Court alone is empowered to release such person on bail.

[31 Calc. page 142.]

(C.) EMPEROR vs. ZAWAR RAHMAN.

Trial by Jury—Evidence—Previous statement, admissibility of—Contradictory statements—Depositions before the Committing Magistrate—Criminal Procedure Code (Act V of 1898), section 288—Practice.

In a trial before a Court of Sessions, counsel for the prisoner is not entitled to refer to the depositions given before the Committing Magistrate for the purpose of contradicting the witnesses before the Sessions Court, without drawing their attention to the alleged contradictions in their previous depositions and giving them an opportunity of explaining the same: *Empress vs. Haran Chander Mitter* (6 C. L. R., 390) over-ruled.

[31 Calc. page 350.]

(D.) SURJYA KANTA ROY CHOWDHURY vs. EMPEROR.

Transfer—Security to keep the peace—Jurisdiction of Magistrates—Criminal Procedure Code (Act V of 1898), sections 107, 192—Proceedings, initiation of.

A District Magistrate instituting proceedings under section 107 (2) of the Criminal Procedure Code has power to transfer the enquiry to any Subordinate Magistrate competent to inquire into the same.

The object of section 107 of the Criminal Procedure Code, is to restrict the initiation only of proceedings against persons residing beyond the local limits of the jurisdiction of District Magistrates, and not to restrict their power to transfer such proceedings, after initiation, to a Subordinate Magistrate: *Shama vs. Lechhu Shekh*, I. L. R., 28 Calc., 300; *Raghu Singh vs. Abdul Wahab*, I. L. R., 23 Calc., 442, distinguished: *Dinendra Nath Shanial*, In re I. L. R., 8 Calc., 851; *Satish Chandra vs. Panday Rajendra Narain Bagchi*, I. L. R., 22 Calc., 398, referred to.

King-Emperor vs. Munna, I. L. R., 24 All., 151, followed.

The proceedings under section 107 of the Code are intended to be precautionary, and not punitive.

[31 Calc. page 411.]

(A.) **EMPEROR vs. BAKAULLAH MALLIK.**

Trade-mark—Selling goods marked with a counterfeit trade-mark—Sections 482, 486 of the Indian Penal Code as amended by the Merchandise Mark Act (Act IV of 1889 as amended by Act IX of 1891), sections 6 and 7—Applying a false trade description to goods.

Held, a person may to some extent appropriate to his own use a name suggested by his trade, without infringing the law relating to trade-marks or trade descriptions.

Held, also, that the appellants, who sold fish-hooks, in boxes similar to the respondents with a design of one fish with its head and tail turned up, cannot be held to have infringed the trade-mark of the respondents, who also sold fish-hooks with the design of two fish crossed, with their heads and tails turned up.

Held, where the public has chosen a name for its own use, such as "mash marka" (fish mark), that fact cannot be held to prevent other persons from applying a mark to fish-hooks which may be generally known by the same term.

[31 Calc. page 419.]

(B.) **KASI SUNDAR ROY vs. EMPEROR.**

Criminal Procedure Code (Act V of 1898), section 110 (e)—Abetment—Abetment of the commission of offences involving a breach of the peace—Residence—Jurisdiction.

Held, that where under the orders and with the connivance of the zemindar various acts of oppression are committed, such conduct of the zemindar would bring him within the scope of clause (e) of section 110, Criminal Procedure Code.

Held, also, that for the purpose of proceedings under section 110, Criminal Procedure Code, a Magistrate has jurisdiction to try a person, who has a residential house and frequently resides for the purpose of his business, within the local limits of the Magistrate's jurisdiction, provided acts of oppression (the subject of the charges under section 110) are committed, while he so resides.

[31 Calc. page 424.]

(C.) **ABINASH CHANDRA ADITYA vs. ANANDA CHANDRA PAL.**

Penal Code (Act XLV of 1860), sections 353, 149—Civil Procedure Code (Act XIV of 1882), section 251—Criminal force by members of an unlawful assembly to deter public servant from discharge of duty.

Section 251 of the Code of Civil Procedure requires the Court to specify in a warrant for

execution of decree the day on or before which the warrant must be executed.

A Commissioner attempting to give possession under a time-expired warrant, has no authority to go upon land in the possession of the party who resists the execution.

[27 Bom. page 551.]

(D.) **EMPEROR vs. JAMSETJI C. CAMA.**

Cocaine—Abkari Act (Bombay Act V of 1878), sections 3 (9) 62—Medicated article—Intoxicating drug.

The term "medicated article" as used in section 62 of the Bombay Abkari Act (Bombay Act V of 1878), applies to something which is manufactured and by that manufacture is imbued with certain medicinal properties. It does not, therefore, include cocaine, which is a medicine *per se*.

The word "intoxicating" as used in section 3, clause 9 of the Bombay Abkari Act (Bombay Act V of 1878), cannot be confined to its derivative meaning, namely, poisonous: the word must be taken to be used in its popular sense, which would include the effect produced by cocaine.

[27 Bom. page 626.]

(E.) **EMPEROR vs. WAMAN.**

Charge to Jury—Sessions Judge—Misdirection—Inadmissible evidence—Criminal Procedure Code (Act V of 1898), sections 418, 423 (2).

Where a charge to the jury by the Sessions Judge is, upon the whole, favourable to the accused, and most of the points of importance in favour of accused, are more or less dealt with in the charge, the mere fact that some of the points are not so amplified as they might have been, does not amount to a misdirection.

Before the High Court can interfere with the verdict of a jury on the ground that the evidence of accused's confession was wrongly admitted, it must be satisfied, *first*, that the verdict is erroneous; *secondly*, that the erroneousness was caused either by the Judge's misdirection to the jury as to that evidence, or by a misunderstanding on their part of the law as to it as laid down by the Judge.

Where material evidence which ought not to be admitted is admitted, and the jury are placed in possession of it, there is an error in law in the trial under section 418 of the Criminal Procedure Code (Act V of 1898), and there is a misdirection of law when the Judge tells the jury that it is evidence which they can consider and on which they can, if they think proper, convict the accused. The fact that after putting the jury in possession of the inadmissible evidence, the Judge in his charge goes on also to point out circumstances

which would justify the jury in disbelieving the wrongly-admitted evidence does not make the misdirection less a misdirection.

Where evidence which the law says shall not be admitted is let in with other evidence legally admissible, and where the former is of a material character, it would be mere speculative refinement to hold that the jury must have, in convicting the accused, relied upon the latter and rejected the former.

[27 Bom. page 644.]

(A) EMPEROR *vs.* MALGOWDA.

Sessions Judge—Jury—Summing up—Defective direction—Contentions placed before the jury—Judge should not omit pointedly to call attention of the jury to matters of prime importance, especially if they favour the accused.

A Sessions Judge in summing up is entitled to have regard to the elaboration and skill with which the rival contentions have been placed before the jury by the advocates on both sides, but he should not in doing so omit pointedly to call the attention of the jury to matters of prime importance, especially if they favour the accused, merely because they have been discussed by the advocate.

[28 Bom. page. 129.]

(B.) EMPEROR *vs.* ALLOOMIYA HUSAN.

Gambling—Bombay Prevention of Gambling Act (Bombay Act IV of 1887), sections 4, 5, 6, 7,—Keeping a common gaming house—Applicability of presumption under section 7 to cases under section 4—Warrant under section 6—Delay in executing the warrant—Previous conviction—Criminal Procedure Code (Act V of 1898), section 342—Evidence Act (Act I of 1872), sections 11, 54.

On the 19th May, 1903, a warrant was issued by the Commissioner of Police at Bombay, under section 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), for the arrest of accused 1. In execution of this warrant, when, on the 7th June, 1903, the Police entered the room of accused 1, no actual play was seen by the raiding party, but there were found playing cards on the ground, and ten persons

including accused 1, were found sitting in a circle. Upon these facts the Magistrate convicted the accused of keeping a common gaming house, an offence under section 4 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) by applying to him the presumption created by section 7 of the Act, and taking into consideration the previous convictions of the accused under the Act, he sentenced him to pay a fine of Rs. 500, the maximum amount of fine allowed by the section. On appeal to the High Court,

Held, by CHANDAVARKAR and ASTON, J. J. (JACOB, J., dissenting) affirming the conviction—(1) that the presumption created by section 7 of the Prevention of Gambling Act (Bombay Act IV of 1887) could be applied to cases falling under section 5 as well as to those falling within the purview of section 4 of the Act; (2) that the applicability of section 7 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) was affected by the fact, that a considerable interval had elapsed between the issue of a warrant under section 6 of the Act and the execution thereof; (3) that the evidence that the accused had been previously convicted of the same offence was admissible to show guilty knowledge or intention.

Held, by JACOB, J., dissenting—(1) that the presumption created by section 7 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) is sufficient for the purposes of section 5 of the Act. It is also sufficient for the purposes of section 4 (a) so far as regards the fact that the house, etc., is so used, but it is not alone sufficient for the purpose of showing that the house was so kept or used by any specified person; (2) that in a trial for an offence under section 4 (a) of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) the evidence that the accused was previously convicted of a similar offence cannot be admitted either under sections 14, 15, or 54 of the Evidence Act (I of 1872); (3) that the question whether the delay, between the issue of a warrant under section 6 of the Act and its execution, has been reasonable or otherwise, is one which must be decided with reference to the circumstances of each case.

[1 O. C. page 1.]

(C.) RAM NARAIN *vs.* QUEEN-EMPRESS.

Section 395, Indian Penal Code—Presumption of dacoity—Possession of stolen property.

There was no evidence of identification of prisoner at the time of the dacoity. But soon after the occurrence, part of the stolen property was found in his possession.

Held, that the recent possession by the prisoner of property stolen at the dacoity justified the presumption, in the absence of any good rebutting evidence, that the prisoner took part in it.

[1 O. C. page 4.]

(A.) RAM ADHIN *vs.* QUEEN-EMPRESS.

Section 366, Indian Penal Code—Kidnapping of two girls—Separate sentences

The prisoner was convicted of the offence of having kidnapped two girls and sentenced by the Sessions Judge to transportation for life and Rs. 10 fine.

Held, that the offences of kidnapping were separate, and the prisoner should have been separately sentenced.

(B.) [1 O. C. page 84.]

Dacoity, section 386, Indian Penal Code—section 289, Act X of 1862 (Code of Criminal Procedure)—No evidence—Examination of accused, section 342, Criminal Procedure Code.

In a dacoity case, the Sessions Judge recorded the evidence of the witnesses for the prosecution, and, without examining the accused persons considering that there was no evidence against them, acquitted them.

Held, that "no evidence" in section 289, Criminal Procedure Code, means "no legal evidence or proof," and not "no evidence worthy of belief" that the accused should be examined under section 342 of the Code, and called on to enter on their defence. (Select case No. 274 referred to.)

[1 O. C. page 85.]

(C.) QUEEN-EMPRESS *vs.* BHUP SING AND OTHERS.

Trial before Court of Sessions—Act X of 1882, Criminal Procedure Code, sections 287, 289 and 342—Acquittal without taking the whole evidence tendered by prosecution—Re trial.

In a dacoity case, the Sessions Judge—after taking part of the evidence for the prosecution, and considering that the offence against the accused persons whom he did not examine, was not proved, refused to take further evidence, and after recording the opinions of the assessors, acquitted the accused.

Held, that the rules of procedure laid down in sections 287, 289 and 342 of the Code of Criminal Procedure must be followed; and that, under the circumstances, the order of acquittal must be quashed, and the accused retried according to law.

[2 O. C. page 99.]

(D.) GANESHI *vs.* THE CROWN.

Act I of 1878, section 9—Opium, unlawful possession of by member of joint family—Burden of proof—Criminal Procedure Code, section 103, sub-section (1)—Search by Police—Appeal, new plea taken in.

The accused, who was convicted of being in unlawful possession of crude opium, alleged that the witnesses called on to attend the search, were not respectable inhabitants of the locality in which the place searched was situated. He also contended, for the first time in appeal, that his father who was alive was the master of the house, and that failing good evidence as to exclusive possession by a junior member of the joint family, he was entitled to an acquittal.

Held, that when criminal proceedings under section 9 of Act I of 1878, are instituted against a member of a joint family, not being the head of the joint family, it is for the prosecution to prove that the opium found in the common room of the joint family house was in the exclusive possession and control of the particular member of the joint family who is sought to be charged with its possession.

Held further, that the accused's plea could not be discarded merely because it was for the first time put forward in appeal.

Held, further, that under section 103, sub-section (1) of the Code of Criminal Procedure, the police officer was bound to call two or more respectable inhabitants of the locality in which the place searched was situated, to attend and witness the search.

[2 O. C. page 307.]

(E.) SUBBA (ACCUSED) *vs.* THE CROWN.

Criminal Procedure Code, section 118—Security for good behaviour—Criminal Procedure Code, section 123—Confirmation by Sessions Judge of Deputy Magistrate's order—Criminal Procedure Code, section 406—Appeal—Criminal Procedure Code, section 435—Criminal Revision.

The Deputy Magistrate, acting under section 118 of the Code of Criminal Procedure, passed an order directing the accused to execute a bond for Rs. 500, with two sureties of zamindars of good behaviour for Rs. 500 each for good behaviour for a period of three years, and sent the file to the Sessions Judge for confirmation. Before the Sessions Judge the accused was represented by a pleader who did not claim any right of appeal under section 406 of the Code of Criminal Procedure. The order of the Deputy Magistrate was confirmed. The accused applied to the Court of Judicial Commissioner to revise the order of the Court of Sessions.

Held, that orders under section 118 of the Criminal Procedure Code include orders which

require confirmation of the Court of Sessions under section 123, as well as order not requiring such confirmation, and under section 403, are appealable to the District Magistrate.

Held, therefore, that the accused should have appealed to the District Magistrate.

Held, that the accused had in no way been prejudiced by the action of the Court of Session, and that his case therefore did not require the interference of the Code of Judicial Commissioner under section 439 of the Code of Criminal Procedure.

[2 O. C. page 363.]

(A.) MUJIBUL RAHIM KHAN AND ANOTHER vs. QUEEN-EMPRESS.

Criminal Procedure Code, section 437—Discharge, order of—Further inquiry—Notice to accused person—Court, discretion of—Setting aside order of discharge, sufficient reason for.

Held, that though the Legislature did not intend that the issue of a notice to the accused under section 437 of the Code of Criminal Procedure, should be indispensable in the case of an order of discharge, still no Court would be exercising a proper discretion in such a matter; if, before proceeding under section 437 to order a further inquiry in the case in which the accused person may have been discharged, it did not first give him an opportunity, by service of a notice, to show cause against such an order being made.

The incorrectness of the order of discharge on the merits may be a sufficient ground for an order for further inquiry under section 437, but that a Court should not set aside an order of discharge under that section, unless it has and assigns solid and sufficient reasons for doing so.

[3 O. C. page 72.]

(B.) SHANKER AND ANOTHER (ACCUSED) vs. QUEEN-EMPRESS.

Identification of accused—Evidence—Dacoity.

In sessions cases triable by the Court of Sessions, the witness should not be allowed to identify the numerous persons in a body, and that such statements as "I identify all the prisoners as having taken part in the dacoity," are inadmissible. The witness should be called on to identify each individual prisoner, and the identification of each should be separately recorded. Moreover, when the witness has pointed out each individual prisoner to the Judge, it is not sufficient for the Judge to make a note that the witness has done so. He should record the words in which the witness identifies the prisoner as part of the witness's deposition.

[3 O. C. page 80.]

(C.) MATADIN (ACCUSED) vs. QUEEN-EMPRESS.

Defamation—Penal Code, section 500—Privileged statement—Evidence Act (I of 1872), section 182.

The accused told a Deputy Collector that the complainant wanted some bribe for him. The Deputy Collector made some statement to the Deputy Commissioner relating to this communication, whereupon the Deputy Commissioner took down the statements of the accused, the complainant and the Deputy Collector. The complainant then brought a charge of defamation against the accused.

Held, that the statement of the accused made before the Deputy Commissioner fell within the purview of section 182. Evidence Act, and was a privileged statement, and that the accused could not be proceeded against for any defamatory matter in that statement. If his statement were false, he might be prosecuted for giving false evidence.

[3 O. C. page 191.]

(D.) QUEEN-EMPRESS vs. RAJA RAM.

Pardon, revocation of—Power of Court tendering pardon—Criminal Procedure Code, section 337.

The District Magistrate tendered a pardon to the accused under the provisions of section 337, Code of Criminal Procedure, in a case exclusively triable by a Court of Session. The Sessions Judge did not believe the evidence given by the accused, and after he had pronounced judgment, the District Magistrate revoked the pardon.

Held, that the District Magistrate had power to revoke the pardon which he had tendered to the accused.

[3 O. C. page 245.]

(E.) QUEEN-EMPRESS vs. DEBI (ACCUSED).

The accused, who had accepted the tender of a pardon in a dacoity case and was examined as a witness, was tried for and convicted of the offence of dacoity. The Sessions Judge did not try the question whether the accused had failed to comply with the conditions of the tender by giving false evidence, as alleged.

Held, that the Sessions Judge should have tried the question whether the accused intentionally gave false evidence before convicting him of dacoity, and that in the absence of a finding that the accused did give such evidence, the conviction was bad. The Court, which had to decide whether the accused was liable to punishment, for the offence, was the law.

per authority to decide whether such liability had been incurred.

[3 O. C. page 247.]

(A.) MATHURA PARSHAD *vs.*
QUEEN-EMPRESS.

Transfer of proceedings under sections 110 and 112 of Criminal Procedure Code—Power of High Court—Act V of 1898, section 526—Meaning of criminal case in section 526.

Under section 526 of Act V of 1893 (Criminal Procedure Code), the High Court has power to transfer proceedings taken under sections 110 and 112 of the Act from the Court of one District Magistrate to that of another District Magistrate.

The expression "criminal case" used in section 526, will include proceedings of a criminal nature under the Code, other than inquiries into, or trials of, offences.

[3 O. C. page 263.]

(B.) BHAGWANT (ACCUSED) *vs.*
QUEEN-EMPRESS.

Assault—Grievous hurt, no evidence whether accused actually caused—Conviction, amendment of—Punishment—Penal Code, sections 84, 392, 394, 395, 397.

The prisoner and another attacked a man and beat him with *latiks*. There was no evidence as to which of them it was who struck the blow which broke his finger.

The question was whether the prisoner could be properly convicted under section 397, Indian Penal Code.

Held, that the punishment provided by section 397 can be inflicted only on the person actually causing grievous hurt, and not on a person who might be liable for grievous hurt committed by another only in virtue of section 34 of the Indian Penal Code. *Held*, therefore, that the prisoner was not liable to enhanced punishment under section 397. Section 397 does not create a substantial offence, and a Court, therefore, should not frame a charge under that section, but under section 392, read with section 397, or section 395 read with section 397, as the case may be.

[3 O. C. page 314.]

(C.) GIRWARING AND OTHERS
vs QUEEN-EMPRESS.

Composition of offence—Alteration of conviction from non-compoundable to compoundable offence.

Where a person is convicted by a Magistrate of an offence not compoundable, and an

appeal is acquitted of that offence, but convicted of a compoundable offence, for which he had not been tried by the Magistrate.

Held, that the accused should not be convicted of that offence without giving him an opportunity of effecting, if possible, a composition of the offence.

[3 O. C. page 342.]

(D) QUEEN-EMPRESS *vs.* PIRTHLI.

Enticing away married woman—Evidence of marriage—Penal Code, section 498.

The accused was convicted, under section 498, Indian Penal Code, of the offence of enticing away the wife of the complainant. No eye-witness was produced to prove the marriage, which was admitted both by the complainant and his wife.

[4 O. C. page 96.]

(E) RAM ADHIN *vs* DURGA.

Criminal revision—Act V of 1898, section 435—Offence committed in course of judicial proceedings—Penal Code, sections 193, 199, 471—Preliminary enquiry—Order committing accused for false evidence, etc.—Civil Procedure Code, section 643—Criminal Procedure Code, section 476—Application for revision—Civil Procedure Code, section 622.

In a civil case, the Court, after delivering judgment, recorded an order, which was stated to have been passed under section 643, Code of Civil Procedure, sending "the case" with the document to the District Magistrate for inquiry. Sections 193, 199, 471 relate to the offence committed. The applicant applied to the Court of the Judicial Commissioner for a revision of this order under section 435, Act V of 1898 (Code of Criminal Procedure). There was nothing to show that any inquiry was made by the lower Court to satisfy itself that there was sufficient grounds for sending the case under section 643, Code of Civil Procedure, to the Magistrate for investigation. *Held*, that, although the application was headed as one under section 435 of the Criminal Procedure Code, yet it might be regarded as one under section 622, Code of Civil Procedure, and disposed of accordingly.

Held, that, inasmuch as in the order said to have been passed under section 643, Code of Civil Procedure, the lower Court did not state the reasons which led it to consider that there were sufficient grounds for sending the charge to the Magistrate for investigation, it was illegal and should be set aside. If the order was to be treated as one passed under section 476, Criminal Procedure Code, it was equally open to objection on the ground that there was no preliminary inquiry by the lower Court.

[4 O. C. page 119.]

(A) DEBI DIN (ACCUSED) vs.
KING-EMPEROR.

Criminal revision—Application for revision to District Magistrate after its rejection by Sessions Judge—Jurisdiction—Further inquiry, order for—Criminal Procedure Code (Act V of 1898), sections 435 and 437.

In a case of kidnapping, the accused having been discharged by the Deputy Magistrate, the complainant made an application to the Sessions Judge under sections 435 and 437, Code of Criminal Procedure, praying for a further inquiry into the case. The Judge made upon it the following order: "On the petition being taken up, the pleader for the petitioner states 'that he withdraws his petition, and that, if necessary, he will apply to the Deputy Commissioner.' The petition is rejected for want of prosecution." The complainant then made an application under the same sections to the District Magistrate, praying for further inquiry into the case against the accused. The District Magistrate set aside the order of discharge and directed that further inquiry should be made into the case.

In revision, the contention of the accused was that the District Magistrate had no power to direct further inquiry.

Held, that as at the time when the District Magistrate exercised his power of revision, there was no application before the Sessions Judge, nor had the latter exercised his power of revision, the first application having been rejected by him for want of prosecution, the District Magistrate had power to entertain the second application upon which he ordered further inquiry into the case.

The intention of the Legislature in enacting the last clause of section 435, Code of Criminal Procedure, was to prevent the Sessions Judge and the District Magistrate from simultaneously exercising their powers of revision, and from exercising them in such a way as would amount to one of them, as it were, hearing an appeal from, or reviewing an order passed by, the other of them.

[4 O. C. page 127.]

(B.) RAMSARUP vs. KING-
EMPEROR.

Complaint, dismissal of, without examining complainant—Sanction to prosecute—Criminal Procedure Code, sections 190 and 202—Police enquiry into complaint ordered by Magistrate—Criminal Procedure Code, section 476—Criminal revision—Criminal Procedure Code, section 195.

R. S. presented an application to the District Magistrate, in which he accused a certain

police-officer of an offence under section 161, Indian Penal Code. The District Magistrate did not examine R. S. on oath, but made an order directing the D. S. P. to make an inquiry. The D. S. P. reported that the case was a false one, and requested that the complainant should be prosecuted under section 182, Indian Penal Code. Thereupon the District Magistrate made the following order:—"R. S. should be tried under section 182 or under section 211, Indian Penal Code, in the Court of I sanction the prosecution." R. S. applied to the Sessions Judge to set aside the sanction. The Sessions Judge rejected the application on the ground that the petition of R. S. to the District Magistrate was simply treated as "information" and that a Magistrate is not bound "to take cognizance of an offence" directly when he receives a complaint.

Held, that the Sessions Judge was wrong in thinking that the words "may take cognizance of an offence in section 190, Code of Criminal Procedure, meant that a Magistrate is not bound to take cognizance of an offence on receiving a complaint of facts constituting such offence, and that the District Magistrate in this case could treat the complaint as a miscellaneous application," or as mere "information" of an offence upon which he could take action or not, just as he might choose, and upon which, if he chose to take action, he could take such action as he chose. It was incumbent on him under section 206, Code of Criminal Procedure, if he did not transfer the case under section 192 to at once examine the complainant. He could only order an inquiry or investigation into the case, in accordance with the provision of section 202, and he could not make over the case to the Police for inquiry. Following, therefore, *Mahadeo Singh vs Queen-Empress*, *held*, that the complaint of R. S. was not tried out and was not dismissed on evidence recorded by the District Magistrate, or obtained by him in the manner directed by section 202, and that the order passed by him under section 476, Code of Criminal Procedure, was passed without jurisdiction, and should be set aside.

[4 O. C. page 168.]

(C.) QUEEN-EMPRESS vs.
JADU MAL.

Stamp Act (II of 1899), section 62—
"Accepting" meaning of promissory note, receiving unstamped.

The word "accepting" in the first clause of section 62 of Act II of 1899 (Stamp Act) does not mean "receiving," but "executing as an acceptor," and a person does not become liable to punishment under that clause merely because he receives from another a promissory-note without the same being duly stamped.

[S. O. C. page 37.]

(A) NIRBHAE RAM AND ANOTHER
(ACCUSED) vs. KALLU RAM (COM-
PLAINANT.)

Accused triable in district where act is done or where consequence ensued—Criminal Procedure Code, section 179—Criminal Court, jurisdiction of—Criminal breach of trust—Penal Code, section 409.

The complainant in his complaint, under section 409 of the Indian Penal Code, alleged that he consigned a quantity of gur from Fyzabad to the address of the accused in the Central Provinces, who misappropriated a portion of the consignment there. The District Magistrate held, that, under section 179, Criminal Procedure Code, the charge against the accused could be enquired into at Fyzabad.

Held, that section 179 was inapplicable to the case, as the accused were not charged with the commission of an offence by reason of any consequence which ensued at Fyzabad or elsewhere, but solely by reason of what they were alleged to have done in the Central Provinces and that the charge against them was therefore not triable at Fyzabad.

In section 179, Criminal Procedure Code, the words "anything which has been done" mean some act constituting the offence, and the words "any consequence which has ensued" mean some consequence modifying or completing the act.

[S. O. C. page 1.]

(B.) WAJID ALI SHAH
(APPLICANT) vs. ABDUL GHAFUR
KHAN.

Criminal revision—Revision, High Court's power of, in cases under section 145, Criminal Procedure Code (Act V of 1898), sections 145 and 485—Criminal Procedure Code, proceeding under Chapter XII of—Jurisdiction.

Held, that the mere circumstance that an order, which it is sought to have revised under the High Court's powers of revision under the Code of Criminal Procedure, purports to have been made under section 145 of the Code, does not debar that Court from the exercise of those powers and that it can interfere with the order, if it is really not an order under that section, but is passed without jurisdiction.

The words "proceedings under Chapter XII" in section 435, Criminal Procedure Code, mean proceedings which are, as a matter of fact, under Chapter XII, and not proceedings which purport to be under that Chapter, although they are not really so, and although they may be proceedings for which there is no authority in the Code.

[S. O. C. page 37.]

(C.) NARAIN DAS (APPLICANT) vs.
KING-EMPEROR.

Act III of 1867 (Police Gambling Act), sections 3, 5, 6—Common gambling house, presumption as to—Search-warrant—Judge importing his own knowledge into case—Warrant signing with pencil—Credible information, warrant issued on receipt of.

N. D. was convicted under section 3, Act III of 1867, with seven others under section 4 of the same Act.

The house of N. D. was entered and searched under a warrant, signed by the Magistrate with a pencil, in which it was stated that the Magistrate had reason to believe upon credible information that the house of N. D. was used as a common gaming house. The warrant authorized a police-officer to enter and search the house. The police-officer was examined as a witness, and, in cross-examination, stated that he informed the Magistrate that he had received "credible information that gambling was going on." The Magistrate in his judgment stated that "the search-warrant obtained by the City Inspector was signed by me on credible information received from him to the effect that N. D.'s house was used as a common gaming house."

Held, that "A Judge cannot, without giving evidence as a witness in the usual way, import into a case his own knowledge of particular facts."

Held, therefore, that the Magistrate ought not to have imported into the case his own knowledge as to the circumstances under which the warrant was issued.

Held, that there was evidence that the warrant was issued in accordance with law, for it stated that it was issued upon information that the house was used as a common gaming house, and there was a presumption that such statement was true.

Held, that the statement of the police-officer in cross-examination did not necessarily convey the meaning that he gave the Magistrate such information only; and the presumption that the statement in the warrant was true, was not rebutted by his statement.

Held, that the absence of circumstances, in which the presumption referred to in section 5, can alone be drawn, is a ground for holding that the presumption cannot properly be drawn, but the absence of such circumstances has not the effect of making all the evidence taken in the case inadmissible and of vitiating and rendering the conviction illegal.

[5 O. C. page 46.]

(A) DINA NATH vs. KING-EMPEROR.

Sanction for prosecution—Offence in relation to future proceeding in Court prosecution for—Criminal Procedure Code, sections 195 and 476—Penal Code, section 206—Jurisdiction of Court to sanction prosecution

While hearing an appeal by one B against his conviction under section 379, Indian Penal Code, certain facts appearing in the evidence, came to the knowledge of the Sessions Judge, and he consequently called upon one D. to show cause why he should not be prosecuted for an offence punishable under section 206, Indian Penal Code. After making a preliminary enquiry, the Sessions Judge came to the conclusion, that D. should be charged with fraudulently delivering two bullocks to one R. intending thereby to prevent them from being taken in execution of an order, which he knew to be likely to be made by the Court of the Subordinate Judge of Kheri, in the suit of one Musammat Champa Kuar, and took security for D's appearance before a certain Magistrate. The Sessions Judge professed to act under the provisions of section 476, Code of Criminal Procedure.

It was admitted that at the time when the offence, with which D. was charged, was said to have been committed, there was no proceeding in the suit of Champa Kuar pending in the Court of the Subordinate Judge.

Held, that an offence punishable under section 206, Indian Penal Code, may be said to be committed "in relation to a proceeding in a Court," although it is committed, not in relation to a pending proceeding, but in relation to a future proceeding, and that, therefore, the order of the Sessions Judge, sanctioning the prosecution of D. under section 476, Code of Criminal Procedure, was made with jurisdiction.

Held, that the words "any offence referred to in section 195" in section 476, Code of Criminal Procedure, did not include the manner in which the offence might have been committed, but meant "any offence punishable under any of the sections of the Indian Penal Code mentioned in section 195."

[5 O. C. page 55.]

(B.) KABIR AHMAD vs. BHOPAL STATE THROUGH POLITICAL AGENT AND ANOTHER.

Warrant issued by Political Agent of Native State against British Indian subject—British Indian subject, extradition of—Foreign Jurisdiction and Extradition Act (XXI of 1879), sections 1, 11, 12, 18—Extradition of offenders—Criminal breach of trust committed in Native State—Penal Code, section 409.

The Deputy Commissioner of Rae Bareilly passed an order directing that a warrant for the

arrest of the absconded, a native Indian subject of His Majesty, on a charge, under section 409 of the Indian Penal Code, of having committed criminal breach of trust within the territories of the Bhopal State, and issued by the Political Agent of that State, be executed. No charge was pending against the accused in the Court of the Political Agent, and it was contended that as the charge against him was pending in a Court of the Bhopal State, the issue of the warrant by the Political Agent was illegal, and the Deputy Commissioner had no power to execute it.

Held, that under the provisions of the Foreign Jurisdiction and Extradition Act (XXI of 1879), excepting in the case of a British-European subject, the Political Agent for the Bhopal State, may, at the request of the State, issue a warrant for the arrest of any person who has committed, or is supposed to have committed, in the Bhopal State, an offence under section 409, Indian Penal Code, (which is one of the offences mentioned in the schedule annexed to the Act), and on such person being forwarded, it will be the duty of the Political Agent to decide whether the accused shall be tried by him or be made over to the State Courts for trial. It matters not whether a complaint against the accused has been made in the Political Agent's Court or not, and the Magistrate to whom the warrant is directed is bound, under the provisions of section 12 of the Act, to execute it, and has no authority to question the authority or discretion of the Political Agent to issue it.

Held, therefore, that the Deputy Commissioner acted legally in ordering the warrant for the arrest of the accused issued by the Political Agent for the Bhopal State to be executed.

[5 O. C. page 164.]

(C.) KING-EMPEROR vs. PRAG BAKHSH SING.

Sanction for prosecution—Irregularity in granting sanction—Cognizance of offence by Magistrate on Police report—Criminal Procedure Code, sections 192, 195, and 537—Notice to accused before sanctioning his prosecution.

On June 2nd, 1901, P. made a report to the police of an offence under section 457, Indian Penal Code. The Sub-Inspector, who inquired into the matter, reported that the charge was false, and suggested that P. should be prosecuted under section 182, Indian Penal Code. On this report, the Sub-Divisional Magistrate ordered the papers to be filed. Subsequently the Sub-Inspector submitted another report to the District Superintendent of Police in which he gave reasons why the charge should be expunged from the register of crimes. The Superintendent passed the report on to the District Magistrate with a note "Expunge: Sub-Divisional Officer to

take cognizance of case under section 182, Indian Penal Code." The Superintendent then forwarded the papers to the Sub-Divisional Magistrate who issued a summons to P. and ordered the police to produce their evidence on a certain date. Thereupon P. petitioned the Sessions Judge to revise the proceedings.

Held, that the District Magistrate's order was not a sanction to the institution of proceedings under section 182, Indian Penal Code, as the requirements of section 195, Criminal Procedure Code, had not been complied with, nor could his order be regarded as one passed under section 192 of that Code, as he did not take cognizance of the offence.

Held, further, that it was not a case to which section 537 of the Code could be applied, as the so-called sanction had been challenged before any proceedings were taken upon it beyond the issue of a summons to the accused.

[5 O. C. page 203.]

(A.) DUNIA SING vs. KING-EMPEROR.

Habitual offender, evidence of being—General repute, evidence of—Bad character, statements recorded in official papers as to—Statement implicating any person made to any Police-officer while investigating an offence, how to prove special diaries of police, right to inspect—Admissibility of evidence—Criminal Procedure Code, section 110.

The accused were ordered by the Deputy Magistrate to furnish security for good behaviour. Certain witnesses examined by the prosecution were police-officers. One of them deposed that in fifteen theft and burglary cases one or more of, or all, the accused had been suspected and named, and he produced a list of those cases prepared from the special diaries. Objection was taken to its reception, but the objection was over-ruled. On appeal before the District Magistrate, the accused contended that they were entitled to cross-examine the witness after inspecting the special diaries. They further contended that the evidence given by the police-officers was not evidence of general repute. The District Magistrate rejected as inadmissible in evidence the list and all references made thereto. He was of opinion that the evidence of the police-officers was of great weight in showing that the accused had for years been known as bad characters.

Held, that the circumstances that while police-officers were investigating cases they were told that the accused were suspected of having committed, or had committed, the offences which was under investigation could not be proved by the special diaries, but, if relevant, could only be proved by the police-

officers to whom the information was given: that the accused were therefore not entitled to have an opportunity of cross-examining the witness after inspecting the special diaries; and that the District Magistrate adopted the proper course, when he excluded the list and all reference to it in the evidence from consideration.

Held, that "evidence of general repute" means with reference to a man's character, evidence as to his general character founded on the general opinion of the neighbourhood in which he lives, and that evidence as to his general disposition, founded on the opinion of the particular witness, such opinion being the result of the witness's personal experience and observation, is also evidence as to his character. The evidence need not show that the general opinion of the neighbourhood is based on the personal knowledge of the man by his neighbours generally, nor that it has been publicly expressed by his neighbours.

Held, that the evidence as to the character of the accused given by those police-officers who did not speak from personal experience and observation, or depose as to what the neighbours of the accused generally thought of the accused, but gave evidence as to what some of their neighbours said of them in official papers was not admissible.

[5 O. C. page 232.]

(B.) AMIN CHAND vs. KING-EMPEROR.

Forgery—Forged certificate, using, for purposes of obtaining employment—Penal Code, sections 468 and 471.

The accused went to the office of the District Traffic Superintendent, Oudh and Rohilkhand Railway, at Lucknow, in search of employment, and interviewed the chief clerk. On being asked his business, he produced a certificate purporting to be signed by the General Traffic Manager, G. I. P. Railway Co. The chief clerk took the document into the room of the D. T. S. when he was sitting. He thought that the document was not genuine, and suggested that employment should be given to the accused while the document was sent to Bombay for verification. Accordingly the chief clerk directed the accused to put in a written application for employment, which he did, with a second certificate of service. In the application reference was made to this certificate, but not to the one which the accused had first produced. This last-mentioned certificate was a forgery.

Held, that, looking at what the accused did, and at what his intention was at the time when he produced his forged certificate, he used that document within the meaning of section 471, I. P. C., and was properly convicted under that section.

V. [S. O. C. page 240.]

(A.) JAGDEI AND ANOTHER vs.
SRI CHARAN AND ANOTHER.

Sanction to prosecute for making false charge
—Invalidity of proceedings under section
311, I. P. C. Penal Code, section 211—
Prosecution for making false charge—Crim-
inal Procedure Code (Act V of 1898),
section 195—Penal Code, section 342.

The applicants charged S. and C. with hav-
ing committed an offence under section 392,
I. P. C. On the 29th March, 1901, the Deputy
Magistrate recorded a rubkar in which he
stated that the charge made by the applicants
was false, and that for the ends of justice it
was necessary and desirable to prosecute the
applicants under section 211, I. P. C. He
added that in consequence of this the state-
ments of the applicants as accused persons
had been recorded in proceedings to be insti-
tuted against them. He then ordered that
the rubkar, together with the statements of
the applicants and the record in the case
against S. and C. might be submitted to the
Deputy Commissioner, with the request that
the case might be made over to another Ma-
gistrate for the purpose of proceeding under
section 211, I. P. C. The District Magistrate
passed an order making over the case to an-
other Deputy Magistrate for disposal. Pro-
ceedings were taken against the applicants on
charge under section 211.

Held, that the proceedings taken against
the applicants under section 211 were invalid,
inasmuch as the requirements of the law, be-
fore such proceedings under that section
could be taken, had not been complied with.

[S. O. C. page 243.]

(B.) PUDAN vs. KING-EMPEROR.

Habitual offenders, trial of—Accused, two or
more, dealt with in the same inquiry—
Habitual offenders, two or more persons,
associated together as—Proceedings, ille-
gality of—Criminal Procedure Code, sec-
tions 110, 112, 117, sub-sections 4
and 537.

In a case under section 110, Criminal Pro-
cedure Code, the Magistrate dealt with two
accused, P. and G. in the same inquiry and
found that they were "thieves" and so
"desperate and dangerous as to render their
being at large without security hazardous to
the community." The order made by the
District Magistrate under section 112, Crimi-
nal Procedure Code, did not state that he had
received information that P. and G. had as-
sociated together as habitual thieves, etc., nor
was there any evidence to that effect.

Held, that, under the provisions of sub-
section 4 of section 117, Criminal Procedure
Code, the Magistrate is not to deal with two
or more persons in the same inquiry, where
they have not been associated together as
habitual offenders, but is to deal with them
in separate inquiries.

Held, therefore, that P. and G. ought not
to have been dealt with in the same inquiry,
but in separate inquiries.

Held, further, that the Magistrate when he
dealt with P. and G. in the same inquiry in
the absence of any information showing that
they had associated together as habitual
thieves, etc., or of evidence to that effect,
acted illegally, and that the case could not
be dealt with under the provisions of sec-
tion 537 of the Criminal Procedure Code.

[S. O. C. page 246.]

(C.) SAMADIN vs. KING-
EMPEROR.

Evidence of deaf-mute—Deaf-mute, signs
made by, how far admissible in evidence
—Statement embodied in police report or
made to another person in police inquiry,
admissibility of, evidence—Conduct, Evi-
dence Act, sections 8, 32, 118 and 119.

In a murder case, one of the witnesses for
the prosecution was a deaf-mute, and the
question whether the gesticulations of that
man at the place, where the body of the
murdered boy was found and during the
police inquiry, and subsequently in Court,
were evidence against the prisoner, and if so,
what was their value? The Sessions Judge
was satisfied that the deaf-mute could not
understand the questions that were put to
him, and for the most part could not make
his meaning intelligible.

Held, that the deaf-mute was not a com-
petent witness within the meaning of section
118 of the Evidence Act. The signs made by
him, if regarded as conduct, were not admi-
ssible as evidence against the prisoner under
section 8 of the Evidence Act, and if regard-
ed as statements, they were equally inadmi-
ssible under section 32 of that Act.

Statements embodied in first reports to the
police, or statements made by a witness to
another person in the course of a police in-
quiry, are not ordinarily admissible in proof
of the facts stated, though they may be ad-
missible to rebut the suggestion of recent
fabrication of a case, or they may be admi-
ssible under section 32 of the Evidence Act.

[5 O. C. page 313.]

(A.) KING-EMPEROR *vs.* SWAMI DAYAL.

Security to keep the peace—Order directing to give security to keep the peace, omission to serve accused with copy of—Substance of information received by Magistrate, omission of, in the order directing to give security—Criminal Procedure Code, sections 107, 112, 115, 117, 118, and 537.

One S. made a complaint against the applicant. The Magistrate examined her and ordered the police to make a report. The report having been made, the Magistrate directed that notice should issue to the applicant, according to law to show cause by a certain date why he should not be required to execute a bond for Rs. 100 to keep the peace for six months. This order did not set forth the substance of the information received by the Magistrate upon which he was acting under section 107, Code of Criminal Procedure, as it should have done, regard being had to the provisions of section 112 of the Code.

Held, that the omission on the part of the Magistrate to set forth in his order the substance of the information which he received, and the omission to serve the applicant with a copy of an order containing the substance of such information amounted to omissions within the meaning of section 537 and did not vitiate the Magistrate's order directing the applicant to give security. The provisions of sections 112, 115, 117 and 118, Code of Criminal Procedure, do not indicate that an inquiry under section 117 shall not be permitted, unless there is in existence an order which has fully complied with the provisions of section 112, and which has been served on such person under section 115. It is, however, very desirable that Magistrates should in the performance of their duties, attend strictly to the provisions of the law.

[5 O. C. page 316.]

(B.) CHOURI *vs.* PUTAI.

Maintenance to wife, non-payment of, by person ordered by Magistrate to pay—Wilful neglect to pay maintenance to wife, evidence of—Imprisonment on non-payment of maintenance to wife, order of—Reference by Sessions Judge to High Court, on point of law—Criminal Procedure Code, sections 485, 488, 488, sub-section (3).

P. was ordered on the 10th July, 1901, to pay his wife a monthly allowance of Rs. 4 for her

maintenance. On the 21st July, 1902, the Magistrate issued a warrant under sub-section (3), section 488, Code of Criminal Procedure, for levying the amount due from the 10th October, 1901, to the 10th January, 1902, but nothing was realized under the warrant. On the 4th August, 1902, a warrant was issued for P.'s arrest, and on the 12th August the Magistrate sentenced P. to four months' simple imprisonment. He took no evidence on the point as to whether P. wilfully neglected to comply with the order. P. applied to the Sessions Judge for revision, who reported the case under section 438, Code of Criminal Procedure, to the Court of the Judicial Commissioner. He referred to two conflicting rulings of the Calcutta and Madras High Courts, expressed his opinion that the view taken by the latter was more in accordance with the language of sub-section (3), section 488 of the Code, and said "that he referred the case to the Judicial Commissioner's Court in order that it may lay down a rule for Magistrates to follow in future in dealing with similar cases."

Held, that an order for commitment to prison for default in payment of a wife's maintenance allowance cannot be made without proof that the non-payment was due to wilful neglect of the person ordered to pay, and that the Magistrate's order was therefore illegal.

Held, further, that the Sessions Judge could properly report the case to the Judicial Commissioner's Court if he was satisfied that the Magistrate's order was illegal, or if he was doubtful as to its illegality, but not if he was satisfied that it was legal. Section 438, Code of Criminal Procedure, empowers Sessions Judges and District Magistrates on examining under section 435 or otherwise, the record of any proceeding to report for the orders of the High Court "the result of such examination," which means that the Sessions Judge or District Magistrate is to report the incorrectness, illegality, or impropriety, if in his opinion such exists, of the finding, sentence, or order, recorded or passed by the inferior Court, or the irregularity, if in his opinion such exists, of the proceedings of such Court and not that he is to refer abstract points of law to the High Court.

[5 O. C. page 321.]

(C.) MENDAI *vs.* KING-EMPEROR.

Evidence—Conspiracy, evidence of—Confession made to police-officer—Reasonable ground for believing in existence of conspiracy—Inadmissible evidence—Sessions Judge, duty of, in examining witness as to previous statement, etc.—Evidence Act, sections 10, 25, 145, and 155, clause (8)—Murder.

The prisoner was convicted of the abetment of the murder of J. by his wife R. Previous

to his trial *R.* had been convicted of having administered arsenic to her husband *J.*, and having thereby intentionally caused his death. The Sessions Judge said in his judgment that the evidence in the case consisted of the "statement" of *B.* (a witness for the prosecution), and the "statements" of certain persons. The Sessions Judge referred to the witnesses, the Thanadar being one of them proving actions and statements of *R.* in reference to the common intention of herself and the prisoner, which he said were admissible in evidence as "the statement" of *B.* gave "a reasonable ground for believing that *R.* and the prisoner had conspired together." The Sessions Judge referred to the provisions of section 10, Indian Evidence Act, but he did not say what portions of the evidence of *B.* afforded a reasonable ground for believing that the prisoner and *R.* had conspired to murder *J.* The Sessions Judge, in the present case, in which the prisoner was undefended, did not question *B.* as regards her former deposition under the provisions of sections 145 and 155, clause (3) of the Indian Evidence Act.

Held, that, under the provisions of section 10, Indian Evidence Act, there should have been reasonable ground for believing that the prisoner had conspired with *R.* to poison *J.* before anything said or done by *R.* could be a relevant fact as against the prisoner; and that, unless such reasonable ground existed, things said and done by *R.* when the prisoner was not present, were not relevant facts as against him. The circumstances that the prisoner wished that *R.* should live with him as his wife, that he gave *R.* a paper with some stuff in it, twenty days before *J.*'s death, and that he was not to be found during the police investigation into *J.*'s murder and did not satisfactorily explain why he had left his village at that particular time of the year, did not afford a reasonable ground for believing that the prisoner had conspired with *R.* to poison *J.*

Held, further, that the statements made by *R.* to the Thanadar were in so far, as she confessed that she had poisoned *J.*, inadmissible under section 25, Indian Evidence Act, and could not be used as evidence against the prisoner under section 10 of that Act. The criterion in section 25 for excluding a confession is not to whom was the confession made, and was it made by a person accused of an offence, but to whom was the confession made. If it was made to a police-officer, it was excluded.

Held, further, that it is the duty of a Sessions Judge to probe the evidence in the interests of the prisoner as well as of the prosecutor, particularly where the prisoner is not defended.

[6 O. C. page 1.]

(A.) MOHKAM SING vs. KING-EMPEROR.

Sanction to prosecute for making false charge

—Prosecutions for making false charge—
Want of sanction or complaint in Criminal Procedure Code, section 195—
Jurisdiction of Magistrate ordering prosecution under section 182, Penal Code—
Police report, prosecution for making false charge on Criminal Procedure Code—
Sections 157, 173, District Police subordinate to District Magistrate—Penal Code, section 182.

On June 22nd, 1902, the applicant reported at a thana that certain persons had committed a theft. The second officer of the thana held an investigation, and reported that it was not a case of theft, but a matter for the civil Court. The District Superintendent of Police returned the report, saying, that it should have been submitted through the Head-officer of the thana. The Head-officer then sent up what is known as Form B, and reported that the charge of theft was groundless and the applicant was liable to punishment under the Penal Code. Upon this report the District Superintendent of Police, on July 31st, sent the papers to the Court-Inspector with orders that he should state the grounds for a prosecution under section 182 of the Indian Penal Code. The Court-Inspector wrote a note or report that in his opinion the offence should be expunged as it was really a case for the civil Court, and that there were *prima facie* grounds for the institution of a case under section 182, Indian Penal Code, and he sent the file to the Sub-Divisional Magistrate with the recommendation that the offence should be expunged and a prosecution instituted under section 182, Indian Penal Code. The Sub-Divisional Magistrate observed that the papers should have been sent to the District Superintendent of Police, and he sent them to that officer. The District Superintendent of Police, on August 8th, passed the following order:—"Let all the papers be laid before the Sub-Divisional officer in order that the offence may be expunged and a prosecution instituted under section 182, Indian Penal Code." Thereupon the Magistrate passed the following order:—"Let *M.* (the applicant) be charged under section 182, Indian Penal Code. Let the accused be called upon by summons to appear, and let the witnesses for the prosecution be summoned through the police. In revision, the applicant contended that there has been neither a sanction nor a complaint within the provisions of section 195, Code of Criminal Procedure.

Held, that there had been no lawful sanction to the institution of the case against the applicant. A report submitted in the usual way under section 177 and section

173 is not intended to be, and could not be a complaint. The report written by the Thanadar in the case which was not sent direct to a Magistrate was not intended to be a complaint, and was not treated as a complaint, was a mere police report and not a complaint. Similarly the Court-Inspector's note and the District Superintendent of Police's order could not be regarded as complaints. *Held*, therefore, that as there was neither a lawful sanction nor a complaint, the proceedings instituted against the applicant were without jurisdiction and must be quashed.

Held, further, that the only Magistrate to whom the District Police are "subordinate" within the meaning of section 195 of the Code of Criminal Procedure, is the District Magistrate.

[6 O. C. page 73.]

(A.) HARBAKHSH SING AND
OTHERS vs. KING-EMPEROR.

Evidence not recorded in language of Court, effect of, upon criminal trial—Irregularity, defect in Magistrate's Procedure amounting to—Fresh trial—Criminal Procedure Code (Act V of 1898), sections 356 and 537.

Two sets of persons were separately tried and convicted by a Magistrate on charges of rioting. Prior to 1st July, 1902, the Magistrate was empowered, under a certain Government Notification issued under the Code of Criminal Procedure, 1882, to record, in the cases referred to in section 356 of the code now in force, the evidence of the witnesses with his own hand in the English language. This notification was cancelled and ceased to have effect on and after the 1st July, 1902. The trials of these sets of persons above mentioned, commenced before the 1st July, 1902, and ended after that date. In one of them several of the witnesses for the prosecution were examined-in-chief before the 1st July, 1902. In the other of them all the evidence for the prosecution was recorded before that date. The Magistrate recorded the whole of the evidence with his own hand in the English language. The Sessions Judge, in each case, set aside the convictions and sentences and ordered a new trial on the ground that a large portion of the evidence had not been taken down in the language of the Court, as required by section 356 of the present Code of Criminal Procedure.

Held, that the defect in the Magistrate's procedure amounted merely to an irregularity and was not of so serious a nature as to constitute an illegality which should vitiate the trial.

[6 O. C. page 153.]

(B.) RAGHUBAR DAYAL vs. KING-
EMPEROR.

Previous acquittal, plea of, in a Criminal trial upon the same fact—Criminal Procedure Code, section 403—False certificate by Registrar (Act III of 1877), section 81—False declaration—Indian Penal Code, section 197—General Clauses Act, section 26—Criminal revision—Criminal Procedure Code, section 439

The accused was a Sub-Registrar. He registered a document on the back of which he certified that it was presented for registration by the executant who was personally known to him and who admitted its execution. This was a false certificate, as the accused admittedly had not actually seen and had no conversation with him. He was tried and convicted on a charge under section 81, Act III of 1877, which alleged that he registered and endorsed the document in a manner which he knew to be incorrect, knowing at the time that he would thereby be likely to cause injury to certain persons. He was acquitted on this charge on the ground that it was not proved that he knew that it was likely that he would cause injury to any one by his act. He was subsequently tried and convicted on a charge under section 197, Indian Penal Code. He pleaded his previous acquittal as a bar to his conviction under section 197, Indian Penal Code, but his plea was disallowed.

Held, that the accused's plea of previous acquittal was a valid plea and that effect should have been given to it. Section 26 of the General Clauses Act was only intended to enact that, provided that he is not twice punished for the act or omission, the offender may be prosecuted and punished at one and the same trial under either or any of the enactments, and the accused's case was not taken out of sub-section (1) of section 403, Criminal Procedure Code, by that section.

It was failure to prove that the accused endorsed a false certificate with the knowledge that he was likely to cause injury to certain persons which brought about his acquittal, and no doubt as to whether the facts alleged against him constituted an offence under section 81, Act III of 1877.

Held, therefore, that the last part of sub-section (1) of section 403 of Criminal Procedure Code was not applicable.

[6 O. C. page 192.]

(C.) PURAN vs. KING-EMPEROR.

Procedure in cases when part of evidence is recorded by one Magistrate and then it is transferred to another—Consent of accused—Illegality—Illegal trial—Criminal Procedure Code, sections 528 and 537—Fresh trial—Indian Penal Code, section 387.

A Magistrate, subordinate to the District Magistrate, commenced the trial of the

prisoner. The District Magistrate, acting under section 528, Code of Criminal Procedure, then withdrew the case from the Subordinate Magistrate and tried it himself. He did not commence the trial afresh, but when the prisoner said, on being questioned, that he did not wish to have the witnesses for the prosecution examined again, he proceeded to examine him again, to frame a charge against him under section 387, Indian Penal Code, and complete the trial.

Held, that the District Magistrate should have commenced the trial afresh and ought not to have asked the prisoner whether he wished to have the witnesses for the prosecution examined again, section 537 is intended to apply to formal defects and irregularities, and not to illegal trials.

Held, therefore, that the defect in the trial of the prisoner was not one to which the provisions of section 537 were intended to apply, and the fact that the prisoner consented to the course pursued by the District Magistrate did not cure the illegality of that course.

[6 O. C. page 199.]

(A.) KING-EMPEROR *vs.* MANGAL.

Security for good behaviour—Sureties being residents of a certain locality, condition as to—Magistrate's discretion in taking security for good behaviour, how to be exercised—Code of Criminal Procedure, sections 112, 118 and 122.

It is not competent for a Magistrate to include in an order, under section 112 or section 118 of the Code of Criminal Procedure (Act V of 1898), a condition that the sureties shall be residents of a certain locality, when drawing up an order for security a Magistrate should remember that the object is to obtain security for good behaviour and not to punish the person concerned with imprisonment, and he should therefore abstain from imposing conditions likely to unduly embarrass the person to be bound over.

No precise rule can be laid down as to the reasons for which a Magistrate may reject sureties under section 122 of the Code.

[6 O. C. page 204.]

(B.) SRI KISHEN *vs.* KING-EMPEROR THROUGH BHABUTI.

Confession of co-accused, conviction resting upon—Accused, statement made by—Code of Criminal Procedure, section 342—Court importing its personal knowledge into the case—Evidence—Dacoity.

An accused person ought not to be convicted where the only evidence against him is the confession of a co-accused and circumstantial

evidence which, although true, would not itself support a conviction.

The Legislature did not intend that, under colour of an examination under section 342, Code of Criminal Procedure, an accused person should make statements such as he might make if he were being examined as an approver.

In a dacoity case the Magistrate stated in his judgment that the identification at the Jail was carried out in his presence in such a manner "as to admit of no fraud."

Held, that the Magistrate could not import his own knowledge into the case except as a witness.

[6 O. C. page 236.]

(C.) CHOKHE AND OTHERS *vs.* KING-EMPEROR.

Tender of pardon, withdrawal of—Illegal trial.

At the commencement of a trial upon a capital charge, the Sessions Judge tendered a pardon to C, one of the three accused, which was accepted, but after hearing a few words of the statement of C, the Judge withdrew the tender and put C. back into the Dock and tried him with other two accused.

Held, that the Code of Criminal Procedure does not contemplate the withdrawal of a tender of pardon, and that the trial of C. was therefore under the circumstances illegal and must be set aside.

[6 O. C. page 262.]

(D.) SHEO DIN *vs.* KING-EMPEROR.

Security for good behaviour—Discharge of person called upon to give security for good behaviour, second enquiry after—Jurisdiction of District Magistrate—Order of discharge made after full enquiry—"Accused person," meaning of—Criminal Procedure Code, sections 112, 119, and 487—Criminal revision.

A Sub-Divisional Magistrate, acting upon information received from a Sub-Inspector of Police, called upon the applicant to give security for his good behaviour for three years and, after a full inquiry at which witnesses for the Crown and the applicant were examined, discharged him. Subsequently, the District Magistrate, upon the report of the District Superintendent of Police, that the applicant should again be called upon to show cause why he should not give security, examined a few of the principal witnesses for the prosecution in order to see "whether the case should be again instituted in view of the recent acquittal," and made an order under section 119 of the Criminal Procedure Code, calling upon the applicant why he should not give security for good behaviour for three years, and after full inquiry ordered him to give such security.

Held, that the proceedings of the District Magistrate were without jurisdiction. He had no jurisdiction under section 437 of the Criminal Procedure Code to make or to order a further inquiry into the case, inasmuch as in that section the words "accused person" were not intended to apply to a person called upon to furnish security under section 112, and the word "discharged" referred to a person who had been accused of an offence, and had been discharged from the accusation or charge. It is altogether contrary to principle that when a competent Magistrate has held a full inquiry and decided that it is not necessary to call upon a person to give security for his good behaviour, the same or any other Magistrate should re-open the proceedings, but an order of discharge or release under section 119 of the Criminal Procedure Code even after a full enquiry does not for ever bar further proceedings against the same person. Under the circumstances of the present case, it was *held* that the order which the Sub-Divisional Magistrate passed under section 119, was analogous to a judgment of acquittal rather than to an order of discharge, and that the proceedings held by him could not be re-opened by another Magistrate.

[7 O. C. page 51.]

(A.) G. T. JACKSON vs. KING-EMPEROR.

Cantonment Code, 1899, sections 83 and 85—Notice for repairs of buildings—"Insanitary state" and "defects," meaning of—Presumption as to issue of notice by duly constituted authority—Criminal revision—Criminal Procedure Code, section 439.

The Cantonment Magistrate issued a notice under section 83 of the Cantonment Code to the applicant, to the effect that a house belonging to the latter had been declared both ruinous and insanitary by expert opinion, and that he was thereby directed to carry out the repairs indicated in an attached report which recommended general repairs. The applicant having failed to comply with the notice, was prosecuted and convicted.

Held, that for the purposes of a prosecution under section 85 read with section 83 of the Cantonment Code, 1899, it is not necessary for the prosecution to begin by proving that the authority which issued the notice was duly constituted, and the Court ought to presume, until some evidence is given to destroy the presumption, that the Cantonment authority issued the regular and lawful procedure, and that the common course of business was followed in its procedure, and it is for the person raising the objection to give some evidence to show that it would not be safe to make such a presumption.

Held, that the phrase "insanitary state" does not mean an insanitary state generally, but an insanitary state as qualified by the preceding words, that is, an insanitary state

resulting from the ill-construction or dilapidation of the building. The word "defects" in that section means "sanitary defects," and the repairs which the notice may require the owner to execute, must therefore be such repairs as are necessary to remove the sanitary defects resulting from the ill-construction or dilapidation of the building.

Held, therefore, that the repairs which the applicant was required to carry out, were repairs of such a nature as to put the house into habitable order generally, and not merely repairs to remove sanitary defects of the nature contemplated in section 83: that the Cantonment authority was not authorized by the provisions of section 83 to issue a notice for general repairs; that it did not exercise a legal discretion in directing under that section such repairs to be carried out, and that the notice was bad and invalid in law.

[7 O. C. page 68.]

(B.) RAI NARAIN DAS vs. KING-EMPEROR.

Cantonment Code sections 83, 85 and 283—Notice for general repairs—Criminal revision—Code of Criminal Procedure, section 439—Penalty for failure to comply with notice for repairs.

The Cantonment Magistrate by a notice purporting to have been issued in accordance with section 83, Chap. VI. Cantonment Code, directed the applicant to carry out certain general repairs in a house as recommended by a committee of arbitration. The applicant having failed to comply with the notice, was convicted under section 283 of the Cantonment Code.

Held, that the procedure adopted by the Cantonment Magistrate was not authorized by section 83 of the Cantonment Code, and also that the repairs ordered to be carried out were not the kind of repairs contemplated by section 83, and that the notice purporting to have been issued under that section was bad and invalid in law.

Held, further, that a penalty for failure to comply with a notice under section 83, being expressly provided for in section 15, the conviction under section 283 was illegal: *G. T. Jackson vs. King-Emperor*, 7 O. C. 51, followed.

[7 O. C. page 82.]

(C.) MUKTA PERSHAD AND OTHERS vs. KING-EMPEROR.

Court-Inspector, seat of, when conducting cases—Persons conducting prosecution or defence not to occupy a seat on the dais of the Court.

No person conducting the prosecution or defence in a case should, under any circumstances, be allowed to occupy a seat on the dais of the Court.

[26 All. page 197.]

(A.) **EMPEROR v. TIKA.**

ACT—1860—XLV [INDIAN PENAL CODE], SECTIONS 109 AND 366—Kidnaping from lawful guardianship—Kidnaping not a continuing offence—Abetment. One musammat Chunia by making certain false representations to the mother of Jiwania, a married girl of eleven years of age, induced her to part with the custody of her daughter. Chunia took the girl away from her own village to a neighbouring village, where she was joined by one Tika. Thence Chunia and Tika took the girl about with them from place to place making unsuccessful attempts to dispose of her in marriage, until they were arrested by the chaukidar of Faipur on his being informed that an attempt had been made to sell the girl in that village. Upon these findings Chunia was convicted of the offence punishable under section 366 of the Indian Penal Code and Tika of abetment of that offence, following the ruling in *The Queen v. Samia Kaundan* (I. L. R. 1 Mad. 173). On appeal to the High Court, that of Chunia was summarily rejected. As to Tika it was *held*, dissenting from *The Queen v. Samia Kaundan* and agreeing with the view taken in *Queen Empress v. Ram Sundar* (1 L. R. 19 All., 109), and *Rakhal Nikari v. Queen-Empress* (2 C. W. N. 81), that the offence of kidnapping being completed as soon as the minor was actually taken out of the custody of her guardian, Tika could not properly be convicted of abetment on the hypothesis that the offence was a continuing one. But, inasmuch as there was evidence on the record that the assistance given by Tika in attempting to dispose of the girl Jiwania was the result of a conspiracy entered into before the kidnapping took place, the conviction of Tika for abetment of kidnapping was sustained.

[26 All. page 202.]

(B.) **EMPEROR v. RAJA RAM.**

CRIMINAL PROCEDURE CODE SECTION 514—Security to keep the peace—Forfeiture of recognizance—Criminal Procedure Code, section 107; schedule V. No. 10. Held

under the Code of Criminal Procedure is taken against a person under recognizances to keep the peace, or against his surety, on the conviction of the former of an offence involving a breach of the peace is no bar to the taking of such proceedings at a subsequent time, as, for example, after the time for appealing has expired, or after an appeal by the principal has been dismissed. *In re Ram Chunder Lalla* [1 C. L. R., 134, and *In re Parbutti Churn Bose*, [3 C. L. R., 406, dissented from.

[26 All. page 211.]

(C.) **EMPEROR v. GEORGE BOOTH.**

CR. P. C. SECTIONS 274, 451 [6]—Notification No. 1693/VI-545A-10 of 1884—Trial held by a jury consisting of a larger number than at prescribed by law—Illegality. Where the Local Government had by notification under section 274 of the Code of Criminal Procedure directed that in trials by jury before a Court of Session the jury should consist of five, it was held that a trial before a District Magistrate under section 451 of the Code with a jury consisting of seven persons was held before a tribunal not properly constituted and must be set aside.

[26 All. page 270.]

(D.) **EMPEROR v. TOTA.**

ACT—1867—III [GAMBLING ACT], SECTION 13—Gaming in public place—Seizure of money as well as instruments of gaming not authorized. Held that where persons are found gaming in a public place under circumstances to which section 13 of Act No. III of 1867 is applicable, although instruments of gaming, &c., may be seized by the police, there is no authority for the confiscation of money found with the persons arrested. *Sant and Ram Sahai v. Queen-Empress*, [Punj. Rec., 1891 Cr. J., p. 60 followed.

[26 All. page 326].

(D.) **KALLU v. KAUNSILIA.**

CRIMINAL PROCEDURE CODE SECTION

adultery." Held that the fact that a woman who applied for an order of maintenance against her husband had given birth to an illegitimate child some two years before the date of her application, was not a reason for refusing to make an order for maintenance, it being found that since that time she had been living with her parents and leading a chaste and respectable life. *Empress v. Nandan* [Weekly Notes, 1881, p. 37]. *Petition of Kashi Sheodiala*, [Weekly Notes, 1881, p. 62], and *Empress v. Daulat*, [Weekly Notes, 1881, p. 113, referred to.

26 All. page 344].

(A.) EMPEROR v. THAKUR DYAL.

CRIMINAL PROCEDURE CODE SECTION 349—*Case submitted to District or Sub-divisional Magistrate with regard to sentence—Such Magistrate not competent to return case to Magistrate who submitted it.* Where a Magistrate of the second or third class has submitted a case to the District or Sub-Divisional Magistrate under section 349 of the Code of Criminal Procedure, it is not competent to the District or Sub-divisional Magistrate to return the case to the submitting Magistrate if in his opinion the reference was unnecessary. *Imperatrix v. Abdulla*, [I. L. R., 4 Bom., 240], *Queen-Empress v. Viranna*, [I. L. R., 9 Mad. 377], *Dula Faquar v. Bhagirat Sircar*, [6 C. L. R. 276, and *Queen-Empress v. Narai Teliapa*, [I. L. R., 10 Bom., 196], followed.

26 All. page 371.

(B.) EMPEROR v. GHULAM MUSTAFA.

CRIMINAL PROCEDURE CODE, SECTION 122—*Act No. X of 1873 (Indian Oaths Act) section 4—Security for good behaviour—inquiry into fitness of surety—Power of Magistrate in such inquiry to take evidence upon oath.* Held that a Magistrate in inquiring under the provisions of section 122 of the Code of Criminal Procedure into the fitness of a surety tendered in obedience to an order under Chapter VIII of the Code, has power to record evidence upon oath or solemn affirmation. *Queen-Empress v. Pirthipal Singh*. Weekly

Notes. 1898, p. 154, and *Emperor v. Tetu* Weekly Notes, 1903, p. 36, referred to.

26 All. page 380.

(C.) EMPEROR v. BENI BAHADUR.

ACT—1879—XVIII LEGAL PRACTITIONERS ACT), SECTION 32—*Illegally practising as a pleader.* Semble that the expression "Practises in any Court" used in section 32 of the Legal Practitioners Act, 1879, does not mean "habitually acts as a pleader or mukhtar," but signifies the doing of Acts, or, it may be, a single act, in professional capacity as of right which could not be done as of right by a non-professional person.

(26 All. page 386).

(D.) EMPEROR v. SHADL

ACT (LOCAL—1900—1 [N. W. P. AND OUDH MUNICIPALITIES ACT), SECTION 152—*Order of Municipal Board under section 87 for removal of building erected without permission—Disobedience to order—Finality of order.* No prohibition, notice or order, issued by a municipal Board under section 87 of N. W. P. and Oudh Municipalities Act, 1900, is liable to be called in question otherwise than by means of an appeal under section 125 of the Act.

(26 All. page 387).

(E.) EMPEROR v. SHEO LAL.

ACT—1860—XLV (INDIAN PENAL CODE), SECTION 273—*Sale of noxious food* Before a person can be convicted under section 273 of the Indian Penal Code, it must be shown that the article which he has sold or exposed for sale was, to his knowledge or belief, noxious as food or drink.

(26 All. page 509).

(F.) EMPEROR v. BABU RAM.

ACTS—1860 XLV (INDIAN PENAL CODE), SECTION 191—*False evidence—False evidence not necessarily on a point material to the case.* Semble that to constitute the offence defined by section 191 of the Indian Penal Code it is not necessary that the false evidence should be concerning a question material to the decision of the case in which it is given;

it is sufficient if the false evidence is intentionally given, that is to say, if the person making that statement makes it advising knowingly, to be false, and with the intention of deceiving the Court and of leading it to be supposed that that which he states is true, *The Queen v. Mahomed Hossain*, 16 W. R., 37 and *The Queen v. Shib Prosad Giri*, 9 W. R., 6, referred to. *Emperor v. Ganga Sahai* Weekly Notes, 1903, p. 68, discussed.

But if the false evidence does not bear directly on a material issue in the case, being relative to incidental or trivial matters only, that would be a matter to be taken into consideration in fixing the sentence.

(26 All. page 512.)

(A) *EMPEROR v. BINDESRI PRASAD.*

CRIMINAL PROCEDURE CODE SECTION 250—*Fivolous or vexatious complaint—False complaint—Act No. X of 1882 (Criminal Procedure Code), section 560.*

Held that section 250 of the Code of Criminal Procedure is equally applicable to a case which is deliberately false as to one which cannot be said to be more than frivolous or vexatious. *Manjhli v. Manik Chand*, Weekly Notes 1896, p. 180, *quoad hoc* overruled. *Adikkan v. Alagan*, I. L. R., 21 Mad., 237, and *Beni Madhub Kurmi v. Kumad Kumar Biswas*, I. L. R., 30 Cal., 123, followed.

[26 All. page 514].

(B) *EMPEROR v. SUNDER SARUP.*

CRIMINAL PROCEDURE CODE SECTION 4, 190, 192, 195 AND 476—*Act No. XLV of 1860 (Indian Penal Code), section 193—Complaint—Procedure.* An Assistant Collector trying a rent suit came to the conclusion that the plaintiff had committed perjury, and accordingly submitted the record to the Collector of the District "for starting a case under section 193, Indian Penal Code." The "Collector" ordered "that a case under section 193 of the Indian P. Code be initiated against Sundar Sarup and made over for decision to Maulvi Abdul Rafi-ud-din, Magistrate of the first class." *Held* that although the order of the Assistant Collector could not

be regarded as an order under section 476 of the Code of Criminal Procedure, it fell within the definition of a complaint and the Collector, who was also the District Magistrate, had power as Magistrate to take action upon it and passed the order which he had passed. *In the matter of the petition of Alomdar Husain*, I. L. R., 23 All. 249, followed.

(26 All. page 536.)

(C.) *EMPEROR v. ABDUL LATIF.*

CR P CODE SECTIONS 526 AND 527—*Tra fe—Plea that applicant wishes to summon the trying Magistrate as a witness.* for the transfer to another Court of a criminal case pending against them the applicants alleged that the evidence of the trying Magistrate would be required by the accused touching certain matters connected with the case. It was held that inasmuch as the Magistrate was bound under section 257 of the Code of Criminal Procedure to issue a summons, unless he considered that the application for a summons was made for the purpose of vexation or delay, or for defeating the ends of justice, and it was not proper to leave the decision of such a question to the Magistrate whose evidence was required, the application for transfer ought to be granted.

[26 All. page 542].

(D.) *EMPEROR v. SIDHU.*

ACTS—1860—XLV (INDIAN PENAL CODE) SECTIONS 21 AND 99—"Public servant"—*Gorait in the district of Gorakhpur.* *Held* that a gorait is a public servant within the meaning of sections 21 and 99 of the Indian Penal Code.

[26 All. page 564].

(E) *FATTU v. FATTU.*

CRIMINAL PROCEDURE CODE SECTION 206 et seqq—*Discharge—Practice—Powers and duties of Magistrate inquiring into case triable by the Court of Session discussed.* Under Chapter XVIII of the Code of Criminal Procedure a Magistrate inquiring into case triable by the Court of Session has a wide discretion in the matter of weighing the evidence produced on one side or the other, the remedy for an erroneous exercise of such discretion being

provided in the powers conferred on Sessions Judges and District Magistrates by section 436 of the Code. But in the exercise of such discretion, if the question of discharge, or commitment, is one merely of probabilities, the inquiring Magistrate ought rather to leave the decision thereof to the Court of Session than to make an order of discharge, because in his opinion the accused ought to have the benefit of the doubt. *Chiranjilal v. Ram Lal*, Weekly Notes 1904 p. 5, discussed. *Queen-Empress v. Dukes* Weekly Notes, 1899, p. 135, referred to by KNOX J.

27 All. page 172.

(A.) MITHUKHAN v. IN THE MATTER OF THE PETITION OF.

CRIMINAL PROCEDURE CODE, SECTIONS 110, 112, 190, 191 and 526—*Transfer—Security for good behaviour.* Where a Magistrate refused to admit to bail a person against whom proceedings were pending under section 110 of the Code of Criminal Procedure on the ground that "the accused is said to be a dangerous and violent man, who might use his liberty for the purpose of intimidating witnesses," the High Court declined to direct a transfer of the proceedings. Magistrates are left a very wide discretion as to the kind of information upon which they may act in instituting proceedings under Chapter VIII of the Code, and they are not bound to disclose its source. The provisions of section 90 and section 191 do not apply to such proceedings.

[27 All. page 258].

(B.) EMPEROR v. GANESHI LAL.

ACT—1860—XLV INDIAN PENAL CODE), SECTION 183—*Attachment—Warrant not in the possession of the aamin at the time of making the attachment—Lawful authority.* It is the intention of the law that when a public servant attaches property under a warrant in execution of a decree, he must have the warrant with him otherwise the taking of the property is not lawful. *Empress of India v. Amar Nath* [I. L. R., 5 All., 311], referred to.

[27 All. page 260].

PENAL CODE SECTION 405—*Criminal breach of trust—Definition.* A clerk in a record-room made over a document forming part of record in his custody to a person who was entitled to the document but who would otherwise have had to present an application on stamped paper in order to secure its return in a legal manner. Held that the clerk was under the above circumstances rightly convicted under section 409 of the offence of criminal breach of trust by a public servant.

[27 All. page 262.]

(D.) EMPEROR v. UDMI.

CRIMINAL PROCEDURE CODE, SECTIONS 110—*Security for good behaviour—The taking of sureties without personal bonds or recognizances illegal.* Held that there is no provision of law by which a person required to find security to be of good behaviour can be called upon to provide sureties for his good behaviour without at the same time entering into his own bond for that purpose.

[27 All. page 292]

(E.) EMPEROR v. SHIB SINGH.

ACT 1861—V (POLICE ACT) SECTION 4 (2)—*Criminal Procedure Code, section 195—Sanction to prosecute—Sanction to prosecute given by the District Magistrate as head of the police—Revision.* Held that the High Court has no power to interfere in revision where a District Magistrate has granted sanction for a prosecution under section 195 of the Criminal Procedure Code acting therein as head of the Police of the district. *Ramaswamy Lall v. Queen-Empress*, [I. L. R., 27 Cal., 452], dissented from.

[27 All. page 293].

(F.) EMPEROR v. BALWANT.

CRIMINAL PROCEDURE CODE, SECTION 110 and 118—*Security for good behaviour—Delegation of inquiring into sufficiency of security.* Held that it is not competent to a Magistrate who has passed an order under section 118 of the Code of Criminal Procedure to delegate to another officer the duty of inquiring into the sufficiency of the security tendered, but

such inquiry must be made by the Court by which the original order was passed. *Queen-Empress v. Pirhipul Singh* [Weekly Notes, 1898, p. 154], and *Emperor v. Tola*, [I. L. R., 25 All. 212], followed.

[27 All. page 294.]

(A.) EMPEROR v. AZIZ UD-DIN.

ACT—1860—XLV (INDIAN PENAL CODE), SECTION 170—*Personating a public servant—Definition*. Held that to constitute the offence provided for by section 170 of the Indian Penal Code it is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated. *Queen-Empress v. Wazir Jan*, [I. L. R., 10 All., 58], referred to.

[27 All. page 296.]

(B.) MARTIN IN THE MATTER OF THE PETITION OF T. A.—

CRIMINAL PROCEDURE CODE SECTIONS 145 (1) AND (439) (3)—*Revision—Jurisdiction to interfere with an order purporting to be passed under section 145*. Where an order purporting to be passed under section 145 (1) of the Code of Criminal Procedure after evidence recorded which satisfied the Magistrate that there existed a dispute likely to occasion a breach of the peace in respect of certain immovable property was found to be insufficient or defective in the sense that it gave no information as to the subject of the dispute and left the persons to whom it was issued quite in the dark as to the property in regard to which they had to set forth their respective claims, it was held that the inadequacy of such order gave the High Court jurisdiction to interfere. *Mohesh Sower v. Narain Bag* [I. L. R., 27 Cal., 981, and *Sukru Dasadh v. Ram Pergash Singh*, [I. L. R., 30 Cal. 443, followed.

[27 All. page 298.]

(C.) EMPEROR v. BAZID.

PENAL CODE SECTION 441—*Criminal trespass—Definition—Occupation by samindars of house left by deceased tenant*. A tenant of village S, who owned a house there but was temporarily residing in a

neighbouring village, died, and on his death the samindars of the village took possession of the house. In consequence of the tenant's widow, who in the last will was entitled to it, held that the act of the samindars could not be taken as amounting to criminal trespass within the meaning of section 441 of the Indian Penal Code. *Emperor v. Tangi Singh*, [I. L. R., 24 All 194], referred to.

[27 All. page 306.]

(D) EMPEROR v. KAMESHAR.

PENAL CODE SECTION 474—*Boundary marks placed by authority of public servant—Definition—Criminal Procedure Code, section 145*. A Magistrate making an order under section 145 has no authority to cause the property which is subject of a dispute likely to occasion a breach of the peace to be demarcated by boundary pillars, and consequently, if he does so, a person destroying or removing such boundary pillars is not liable to conviction under section 474 of the Indian Penal Code.

[27 All. page 302.]

(E.) GENDAN LAI v. ABDUL AZIZ KHAN.

PENAL CODE SECTIONS 417, 420—*Cheating—Definition—Pre-emption—Failure to disclose existence of mortgage subsequent to purchase*. The vendee defendant in a suit for pre-emption compromised the suit the plaintiff agreeing to pay a certain sum in cash and to discharge certain incumbrances on the property in suit. It was subsequently discovered that the vendee had, after his purchase but before suit, mortgaged the property which was the subject of the suit for pre-emption.

Held that the vendee could not, on account merely of his omission to disclose the existence of this subsequent mortgage be held guilty of the offence of cheating

[27 All. page 359]

(F.) QAYYUM ALI v. FAIYAZ ALI.

CRIMINAL PROCEDURE CODE SECTION 439—*Revision—Practice—Order of acquittal*. Although the High Court has the power to interfere in revision with an original or appellate judgment of acquittal, it will ordinarily not do so.

[27 All. page 397.]

(A.) EMPEROR v. GEORGE POWEL.

CRIMINAL PROCEDURE CODE SECTION 443 et seqq—European British subject—Claim of status as a European British subject without claim to be tried by a jury—District Magistrate—Jurisdiction. One G. P. who was sent for trial before a district Magistrate on a charge of robbing under section 147 of the Indian Penal Code, claimed that he was a European British Subject but did not ask to be tried by a jury. The Magistrate after inquiry found that G. P. was not a European British subject, tried and convicted him under section 147, but passed upon him a sentence, which as District Magistrate he could legally have passed upon a European British subject. G. P. appealed to the Sessions Judge. The Sessions Judge, on the question being again raised, found that G. P. was a European British subject and thereupon set aside his conviction and sentence and directed that he should be retried by the District Magistrate. *Held* that this procedure was erroneous. In as much as the appellant had never claimed to be tried by a jury, and the Magistrate who had tried and convicted him was competent to try him as a European British subject and had passed a sentence which was not in excess of his powers as a Magistrate trying a European British subject, the Sessions Judge on finding that the appellant was a European British subject should have gone on and heard his appeal on the merits. *Empress of India v. Berrill*, 1 L. R., 4 All. 141, distinguished.

[27 All. page 415.]

(B.) MANKI v. BHAGWANT.

CRIMINAL PROCEDURE CODE, SECTIONS 439 AND 522—Revision—Powers of High Court—Reversal of order under section 522. *Held* that under section 439 and section 423 (1) (d), the High Court has power, as a Court of revision, to reverse an order passed by a subordinate Court under section 522 of the Code of Criminal Procedure. *Ram Chandra Mistry v. Nobin Mirdha*, 1 L. R., 25 Cal., 630, distinguished.

[27 All. page 465.]

(C.) EMPEROR v. JAGAN NATH.

CRIMINAL PROCEDURE CODE SECTION 439—Revision—Practice—Discretion of Court. Unexplained delay in applying for revision of an order passed to the prejudice of the applicant is a reason for the High Court, in the exercise of its discretion, declining to interfere.

[27 All. page 469.]

(D.) EMPEROR v. JAGARDEO PANDE.

ACT 1 OF 1872 (INDIAN EVIDENCE ACT) SECTION 155—Impeachment of credit of witness—Proof of previous statement of witness to the police—Criminal Procedure Code section 162.

Held that for the purpose of impeaching the credit of a witness who gives evidence in favour of an accused person it is not illegal to examine the Police Officer who investigated the case with the object of showing that the witness made a different and inconsistent statement before him. *Queen-Empress v. Sitaram Fithal* 1 L. R., 11 Bom., 657, and *Queen-Empress v. Madho* 1 L. R., 15 All., 25, followed.

27 All. page 480.

(E.) EMPEROR v. TARA SINGH.

ACT—1860—XLV (INDIAN PENAL CODE) SECTION 184—Act (Local) No 11 of 1901 (Agra Tenancy Act) section 134—Distraint—Sale adjourned owing to absence of bidders—obstruction to sale on adjourned date. The law as laid down in Chapter IX of the Agra Tenancy Act, 1901, does not authorize the adjournment of a sale of distrained property owing to the absence of bidders. Hence where for this reason an auction adjourned a sale, and fixed a fresh date, and obstruction was offered to the sale so adjourned, it was *held* that the person so obstructing the sale could not be convicted under section 184 of the Indian Penal Code.

[27 All. page 483.]

(F.) NUR MUHAMMAD v. AYESHA BIBI.

CRIMINAL PROCEDURE CODE SECTION 488—Maintenance—Effect of Civil Court decree in a suit for restitution of conjugal rights.

rights upon an order for maintenance passed by a Magistrate.] A husband, against whom an order had been passed by Magistrate under section 488 of the Code of Civil Procedure directing him to pay a monthly allowance of Rs. 4-8 for the maintenance of his wife brought a suit against his wife for restitution of conjugal rights. The suit was compromised, and a consent decree passed whereby the petitioner was to pay the respondent Rs. 4-4 per mensem and to provide a house for her to live in near his own. *Held* that this decree of the Civil Court superseded the order of the Magistrate passed under section 488 of the Code of Civil Procedure. *In re Bulakidas*, 1. L. R. 23 Bom. 481, followed.

[7 All. page 491.]

(A.) EMPEROR v. NARBADESHWAR.

PENAL CODE SECTION 225B 353—*Rescue from lawful custody—Legality of warrant—Civil Procedure Code sections 82, 174.* An Assistant Collector issued warrants for the arrest of certain witnesses, for whose attendance summonses had been issued, but who had not appeared in obedience thereto. The serving officer had not been able to effect personal service of the summonses, but had affixed copies to the houses of the persons to be served. The Court previous to issuing warrants did not comply with the provision of section 82 of the Code of Civil Procedure, though it was apparently of opinion that there had been due service of the summonses. The officers charged with the execution of the warrant arrested one of the witnesses, but they were attacked by N and others, and the man they had arrested was rescued. N was convicted under sections 225B and 353 of the Indian Penal Code. *Held* that even if section 225B was not applicable, the conviction under section 353 of the Code was perfectly justified.

[27 All. page 499.]

(B.) EMPEROR v. ABDULLAH.

PENAL CODE SECTION 186—*Act No. VIII of 1873 (Northern India Canal and drainage Act), sections 45 and 47—Mode of collection of canal dues—Distraint.*

Where under a written order signed by a Tahsildar the Naib Nazir was directed to realize certain canal dues, and he, on attempting to do so by attachment and sale of the defaulter's property, was resisted by the owners of the property, it was *held* that the conviction of the persons offering resistance under section 186 of the Indian Penal Code was good. The Tahsildar's order, though not of a formal nature, was sufficient evidence that the Naib Nazir was acting as a public servant in the discharge of his duty. *Held* also that the appointment of lambardars does not preclude the Revenue authorities, if they think fit, from realizing canal dues from the persons by whom the dues are actually payable. *Queen-Empress v. Poomalai Udayan* 1. L. R., 91 Mad., 296, referred to.

[27 All. page 561.]

EMPEROR v. BISHAN DAS.

ACT—1860—XLV (INDIAN PENAL CODE), SECTION 415—*Cheating—Definition—Sale of immovable property without mentioning incumbrances.* The vendor, of immovable property cannot be convicted of cheating because he omits to mention that there is an incumbrance on the property, unless it is shown either that he was asked by the vendee whether the property was incumbered and said it was not, or that he sold the property on the representation that it was unincumbered. *Horsefall v. Thomas*, 31 L. J., Ex., 322 referred to.

[37 All. page 567.]

EMPEROR v. ABDUL SATTAR.

ACT 1867—III (GAMBLING ACT) SECTION 1—*Common gaming house—Definition—Profit derived from odds in favour of the bank.* *Held* that a house was none the less a "common gaming house" within the meaning of section 1 of Act No. III of 1867 because the profit of the owner, occupier or keeper of the house was derived, not from payments made for the use of the house or the instruments of gaming, but from the game itself, by reason of the odds being always in favour of the bank.

[27 All. page 623].

[A.] CHET RAM IN THE MATTER OF THE PETITION OF.

CRIMINAL PROCEDURE CODE, SECTIONS 107, 118 AND 406—Security for keeping the peace—Appeal. Held that an appeal will lie from an order under section 118 of the Code of Criminal Procedure requiring security to be furnished for keeping the peace.

[27 All. page 630].

(B.) ABDUR RAZZAQ v. RAHMAT-ULLAH.

CRIMINAL PROCEDURE CODE SECTIONS 517, 520—Order for the disposal of property regarding which an offence has been committed—Half currency notes. When a question arises between two persons who shall bear a loss resulting from the fraud of a third, the one who has been guilty of negligence shall suffer. Hence where A made over to B halves of certain currency notes as security for payment to B of the price of goods delivered, having previously parted with the other halves to C, it was held that B was entitled to recover possession of the halves originally made over to him, from C, to whom they had been delivered under an order of the Court, or to obtain compensation from C, if C had parted with them, inasmuch as it was C's negligence which enabled A to perpetrate a fraud upon B. *Forster v. Green*, [7 All. N., 881], followed.

[28 All. page 62].

(C.) EMPEROR v. DENI.

Act—1860—XIV (INDIAN PENAL CODE), SECTIONS 230, 235 AND 243—Definition—Queen's coin—Murshidabad rupees—Practices—Duty of subordinate courts to follow decisions of superior courts—Maxim—Stare decisis. Murshidabad rupees stand on the same footing as Farrukhabad rupees and fall within illustration (e) to section 230 of the Indian Penal Code, these rupees having been stamped and issued by the authority of the Government of India, or at least of the Government of a Presidency, and issued as money under the authority of the Government

of India, as were Farrukhabad rupees. They are therefore "Queen's coin" within the meaning of the section. *Emperor v. Gopal* [Weekly Notes, 1903, p. 115], followed.

It is the duty of every subordinate court where it finds a decision of the High Court to which it is subordinate applicable to a case before it to follow such decision without question.

(28 All. page 89).

✓ **[D.] EMPEROR v. KUNA SAH.**

CRIMINAL PROCEDURE CODE, SECTIONS 4 AND 476—Jurisdiction—"Judicial proceedings—Inquiry into petition against subordinate official." Held that an inquiry conducted by a Magistrate into the truth of allegations against a subordinate official contained in a petition presented to a Deputy Commissioner is a judicial proceeding within the meaning of section 4 (m) of the Code of Criminal Procedure. *Hars Charan Mookerji v. The King-Emperor*, [I. L. R., 32 Cal., 367], distinguished.

[28 All. page 91].

(E.) EMPEROR v. JUMNA BAI.

CRIMINAL PROCEDURE CODE SECTION 458—Revision—Practice—Sentence reduced by Sessions Judge—Application by District Magistrate asking for enhancement. As a general rule of practice the High Court will not entertain a reference from a District Magistrate which has for its object of the enhancement of a sentence which has been reduced by the Sessions Judge. *Queen-Empress v. Shere Singh* [I. L. R., 8 All. 362], *Queen-Empress v. Zor Singh*, [I. L. R., 10 All. 146], and *Queen-Empress v. Jahandi*, [I. L. R., 23 Cal. 249], referred to.

(28 All. page 98).

(F.) EMPEROR v. DOST MUHAMMAD.

CRIMINAL PROCEDURE CODE SECTION 133—Order for removal of obstruction on public land—Defence raising question of title—Procedure. When in a matter under section 133 of the Code of Criminal Procedure the person called upon to show cause raises a question of title it is for the

trying Magistrate to decide whether the question so raised is raised *bona fide*. But the trying Magistrate ought not to go further and decide whether the title set up does or does not exist.

28 All. page 100.

[A.] **EMPEROR v. HARI SINGH.**

ACT 1860—XLV (PENAL CODE) SECTION 292—*Distributing obscene pamphlet—Definition—Intention*. The test of obscenity with reference to a charge of distributing obscene literature, is whether the tendency of the matter is to deprave and corrupt whose minds are open to such immoral influences into whose hands a publication of this kind may fall. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress. *Empress v. Indarman*, I. L. R., 3 All., 837, *Queen Empress v. Parashram Yeshwant*, I. L. R., 20 Bom., 193, and *The Queen v. Micklin*, L. R., 3 Q. B., 300, referred to.

The question whether a publication is or not obscene is a question of fact.

If a publication is in fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. *Reg v. Gatherecole*, 2 Lewin, C. C. 237, and *The King v. Dixon*, 3 M. and S., 11, referred to.

[28 All. page 142].

[B.] **INAYAT ALI v. MOHAR SINGH.**

CRIMINAL PROCEDURE CODE SECTION 195—*Sanction to prosecute notice of application for sanction—Practice*. When an application is made to a Court under section 195 of the Code of Criminal Procedure for sanction to prosecute, although it is not legally necessary that notice of such application should be given to the opposite party before orders are passed thereon, nevertheless it is highly desirable that such notice should be given. *pampapati Sastri v. Subba Sastri* (I. L. R., 2 Mad., 210). *In re But Gangadhar Tilak*, (4 Bombay Law Reporter, 750), *Mangar Ram v. Behari*, (I. L. R., 18 All., 358), and *Maula Buksh v. Niazo*, (Weekly Notes, 1901, p. 171), referred to.

[28 All. page 199].

[C] **KAMTA NATH v. THE MUNICIPAL BOARD OF ALLAHABAD.**

ACT (LOCAL)—1900—1 (N. W. P. AND OUDH MUNICIPALITIES ACT), SECTIONS 3 AND 87—*Municipal Board—Bye laws—Interpretation of statutes*. Where a rule framed by a Municipal Board forbade the “erection or re-erection of any building” in the Civil station except with the previous sanction of the Board it was held that such prohibition could not apply to the inclosing by means of a canvas screen of a certain space adjoining a house.

28 All. page 204.

[D.] **EMPEROR v. CHANDA.**

ACT—1860—XLV—(INDIAN PENAL CODE), SECTION 426—*Mischief—Definition—Fishery—Draining off water from a river to the detriment of the fishing rights therein*. D., as lessee of Government, held rights of fishery in a particular stretch of river. C., by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing he was enabled to destroy, and did destroy very large quantities of fish, both mature and immature. Held that when C. deliberately change the course and condition of the river in the manner described to the detriment of D. he was guilty of the offence of mischief mentioned in section 426 of the Indian Penal Code. *Bhagiram Dome v. Abar Dome*, I. L. R., 15 Calc. 388 distinguished.

28 All. page 207.

[E.] **MATHRA PRASAD v. BASANT LAL.**

CRIMINAL PROCEDURE CODE SECTION 344—*Adjournment of Criminal case—Power of Court to order costs of the day to be paid by the party for whose benefit an adjournment is granted*. Held that a Magistrate in granting an adjournment under the provisions of section 344 is competent under the same section to order the costs of the day to be paid by the party in whose favour the order for adjournment is made. *Shew Prasad Poddar v. The Corporation of Calcutta*, 9 C. W. N., 18 followed. *King-Emperor v. Chhabraj Singh*, Weekly Notes, 1902, p. 59, discussed and doubted.

28 All. page 210.

[A.] EMPEROR v. ABDUS SAMAD.

ACT 1867—III—(GAMBLING ACT), SECTIONS 4, 5 and 6—*Common gaming house—Evidence—“Credible information.”* Held that when a house is searched by the Police on information that it is a common gaming house, the finding of instruments of gaming will be admissible evidence that the house is used as a common gaming house notwithstanding that the warrant under which the search is conducted is defective, though the finding of such article may not be evidence to the extent mentioned in section 6 of Act No. III of 1867.

Held also that the words “credible information” as used in section 5 of Act No. III of 1867 have not the same meaning as “credible evidence.” The “credible information” there mentioned need not be in writing.

[28 All. page 212.]

[B.] EMPEROR v. CHEDI.

CRIMINAL PROCEDURE CODE, SECTIONS 191, 537—*Procedure—Omission of Magistrate to inform accused of his right to be tried by another Court—Illegality* [the omission on the part of Magistrate to inform an accused person to whom the provisions of section 191 of the Code of Criminal Procedure are applicable of his right to have the case tried by another Court amounts to more than a mere irregularity to which section 537 of the Code will apply; but a Magistrate taking cognizance of an offence under section 190, clause (c) of the Code is not competent to try the case unless and until he has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Court.]

28 All. page 266.

[C.] CHAURASI v. RAMA SHANKAR.

CRIMINAL PROCEDURE CODE, SECTION 145—*Definition—“Crops or other produce of land”—Crops severed from the land not within the definition—Jurisdiction.* Held that the words “crops or other produce of land as used in section 145 (2) of the Code of Criminal Procedure do not include crops which have been severed from the land upon which they grew. A Magistrate has therefore no jurisdiction to attach under

section 146 of the Code a crop of mahua no longer growing on the trees. *Ramzan Ali v. Janardhan Singh*, I. L. R., 30 Cal. 110 followed.

[28 All. page 268].

(D.) GULLY v. BAKAR HUSAIN.

CRIMINAL PROCEDURE CODE SECTIONS 437—*Revision—Practice—Lower (Court having concurrent jurisdiction in revision with the High Court.)* Where the Magistrate of the District dismissed a complaint under the provisions of section 203 of the Code of Criminal Procedure the High Court decline to entertain an application by the complainant asking for further inquiry under section 437 of the Code, when no application for that object had been made to the Sessions Judge.

Emperor v. Kalicharan, Weekly Notes, 1904 p. 252 followed.

[28 All. page 302].

[E.] EMPEROR v. RAM SARUP.

ACT 1878—XI (INDIAN ARMS ACT), SECTIONS 19 AND 20—*Definition—concealment of arms on search being made by the police—Mere denial of possession not concealment—Possession of unlicensed arms.* Held that the mere denial on the part of a person whose house is being searched by the Police for unlicensed arms that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the Police within the meaning of the second paragraph of section 20 of Act No. XI of 1878.

Held also that where unlicensed arms are found concealed upon premises which, though legally the joint property of a joint Hindu family, are in fact at the time of the finding in the exclusive possession and control of one member of the family, that member of the family can properly be held to be in possession of such arms. *Queen Empress v. Sangam Lal*, I. L. R., 15 All. 129 distinguished.

[28 All. page 306.]

(F.) EMPEROR v. RANJIT.

CRIMINAL PROCEDURE CODE V OF 1898 SECTIONS 110-118—*Security for good behaviour—Fresh proceedings taken immediately after the period of a previous*

security bond has expired—Locus penitentie Ranjit was bound over to be of good behaviour for a period of three years, which term expired on the 13th of June, 1905. On the 20th of June, 1905, fresh proceedings were started against him under section 110 of the Code of Criminal Procedure. *Held* that the interval was not long enough to give Ranjit any opportunity of showing that he was willing to adopt an honest livelihood, and that evidence relating to events prior to the 13th of June, 1905, was inadmissible in support of a fresh order under section 110 *Emperor v. Husain Ahmad Khan*, Weekly Notes, 1905, p. 34, followed.

[28 All. page 312.]

(A.) *EMPEROR v. SAILIG RAM.*

PENAL CODE ACT (No. XLV of 1860) SECTION 273—*sale of noxious food—Definition—sale of grain in bulk in closed a pit.* Where as a matter of trade, the owner of a grain pit sold the contents of the pit before it was opened at a certain sum per maund whether the grain was good or bad and on the pit being opened it was found that a large proportion of the grain was unfit for human consumption, it was held that the vendor could not be convicted under section 273 of the Indian Penal Code.

[28 All. page 313.]

(B.) *EMPEROR v. MAIN JAN.*

CRIMINAL PROCEDURE CODE SECTION 403 *Charge of an offence under section 414 of the Indian Penal Code—Previous conviction under section 411 in respect of other property stolen at the same time and from the same person.* Held that where a person had been convicted under section 411 of the Indian Penal Code in respect of certain property stolen on a particular occasion from a particular person, he could not subsequently be tried for an offence under section 414 of the Code in respect of other property stolen on the same occasion from the same person. *Queen-Empress v. Mukham*, I. L. R., 15 317, referred to.

[28 All. page 331.]

(C.) *EMPEROR v. BINDESHARI SINGH.*

CRIMINAL PROCEDURE CODE SECTION 528

—*Transfer—Penal Code, section 193—False evidence—Affidavit of accused person in support of an application for transfer.* Held, that where an accused person applies for the transfer of the case pending against him to some other Court, supporting his application by an affidavit, he cannot, or at least ought not to be prosecuted under section 193 of the Indian Penal Code in respect of statements made therein. *In the matter of the petition of Barket*, (I. L. R., 19 All., 200), followed.

[28 All. page 358].

(D.) *EMPEROR v. ALI HASAN.*

PENAL CODE (ACT No. XLV of 1860), SECTION 465—*Forgery—Definition—Fraudulently*. One Piari, the wife of Amir, left her husband's house. Amir put in a petition at the police station asking that a search might be made for the missing woman, and he also employed a pleader one Ali Zohad, to assist him in discovering the whereabouts of Piari. Ali Hasan the son of Ali Zohad, and a clerk employed in the office of the District Superintendent of Police, forged two orders purporting to be orders of the District Superintendent of Police, the first intimating that the woman Piari was with one Sibni, the wife of Ghisan, weaver, and that the Sub-Inspector should be directed to hand her over to the petitioner (Amir), and the second directing the Sub-Inspector of Kydganj to hand the woman over to the petitioner. Held, that in fabricating these two documents, Ali Hasan had acted fraudulently and had committed the offence punishable under section 465 of the Indian Penal Code. *Queen-Empress v. Sashi Bhusan* [I. L. R., 15 All. 210]; *Queen-Empress v. Abbas Ali* [I. L. R., 25 Cal., 512], and *Kotamraja Venkatraydu v. Emperor*, [I. L. R., 28 Mad., 90] referred to.

[28 All. page 372].

(E.) *EMPEROR v. BALDEWA.*

PENAL CODE SECTION 392, 411—*Criminal Procedure Code, section 181—Jurisdiction Robbery committed outside British India—Stolen property brought into British territory.* Two persons, Baldewa, who was

not a British subject, and Radhna, who was, were committed to the Court of Session at Jabalpur, it being alleged against them that they had committed a robbery in a adjoining Native State and had brought the stolen property into British territory. *Held*, that though neither could be tried by the Sessions Judge of Jabalpur for the robbery, Baldewa because he was not a British subject, and Radhna because the certificate required by section 185 of the Code of Criminal Procedure was wanting, yet both might be tried for the offence of retaining stolen property under section 411 of the Indian Penal Code. *King-Emperor v. Johri*, (I. L. R. 23 All. 265), distinguished. *Queen-Empress v. Abdul Latif* (I. L. R., 10 Bom., 186), followed.

(28 All. page 402).

(1.) **EMPEROR v. MULAI SINGH**.
ACT XLV OF 1860 [PENAL CODE], SECTION 466 AND 471—*Definition—Using as genuine a forged document—Copies of a forged original* Where a person, knowing or having reason to believe that the entries in certain village khasras were forged, took copies of these khasras and used them as evidence in his favour in a civil suit, it was *held* that he might be properly convicted of fraudulently or dishonestly using as genuine the khasras which he knew or had reason to believe were forged, and punished under section 471 read with section 466 of the Indian Penal Code.

(28 All. page 404).

(B.) **EMPEROR v. NAGESHWAR**.

ACT XLV (INDIAN PENAL CODE), SECTION 397—*Dacoity with use of deadly weapons—Applicability of section.* *Held* that section 397 of the Indian Penal Code applies only to the actual person or persons who at the time of committing robbery or dacoity may use any deadly weapon, or may cause grievous hurt to any person, or may attempt to cause death or grievous hurt to any person. *Queen-Empress v. Senta*, Weekly Notes, 1899, p. 186, followed. *Queen-Empress v. Mahabir Tewari* (I. L. R., 21 All. 263), referred to.

(28 All. page 406).

(C.) **EMPEROR v. RAM BARAN SINGH**.

CRIMINAL PROCEDURE CODE, SECTIONS 107 AND 145—*Attempt to eject by force a person in possession of immovable property—Jurisdiction—Procedure.* Where certain persons wrongfully and without any bona fide claim to possession, sought to eject another by force from the possession of certain land, and a breach of the peace was imminent, it was *held* that a Magistrate might legally take action against the aggressors under section 107 of the Code of Criminal Procedure, and it was not necessary on the finding that their claims was not bona fide, to take proceedings under section 145 of the Code.

[28 All. page 421].

[D] **DUKHI KEWAT v. IN THE MATTER OF THE PETITION OF**.

CRIMINAL PROCEDURE CODE, SECTIONS 528 AND 537—*Transfer—Notice—Reasons for transfer not recorded, the transfer being obligatory—Police Officer against whom a complaint was made called upon to submit an explanation.* A complaint was made in the Court of a Deputy Magistrate accusing a Sub-Inspector of Police of offences under sections 323 and 384 of the Indian Penal Code. The Deputy Magistrate brought the complaint to the notice of the District Magistrate, who without recording his reasons for so doing but in obedience to an order of Government, transferred the case to his own file. The District Magistrate also called upon the officer accused to report as to any reason which he knew for the complaint having been made against him. This report was placed on the record, and was used, as the Magistrate stated in his order, to supply grounds for cross-examining the witnesses produced by the complainant. *Held* that omission on the part of the Magistrate to record his reasons for transferring the case was not under the circumstances more than an irregularity, and that his action in calling for a report from the Sub-Inspector and the use made of that report were not improper. *Baidya Nath Singh v. Muspratt* (I. L. R., 14 Cal. 141) dissented from. *Held* also that where a District Magistrate transfers a case from the file of a Subordinate Magistrate to his own, it is not necessary that he should issue notice to the complainant before

doing so.

[28 All. page 464].

(A.) **EMPEROR v. ABDUS SATTAR.**
ACT 1860—XLV (INDIAN PENAL CODE)
SECTIONS 286 AND 337—*Definition—Causing hurt by means of a gun—Evidence of negligence*. Held that the causing of hurt by negligence in the use of a gun would fall within the purview of section 337 rather than of section 286 of the Indian Penal Code. But where all the evidence against the accused was that he went out shooting in the month of July when people were likely to be about in the fields and that a single pellet from his gun struck a man who was sitting in a field, it was held that this was not sufficient evidence of rashness or negligence to support a conviction under section 337 of the Code.

[28 All. page 481].

(B.) **EMPEROR v. BAHAL.**

ACT 1860—XLV (INDIAN PENAL CODE)
SECTION 99 AND 353—*Assaulting public servant in the execution of his duty—Vaccinator attempting to vaccinate a child forcibly—Right of private defence*. A vaccinator attempted to vaccinate a child against the wishes of his father. The father and some of his relations intervened and assaulted the vaccinator, but did not do him any particular harm. Held that the child's father and other relations were perfectly justified in interfering, and under the circumstances could not be said to have acted in excess of their right of private defence. *Mangobind Muchi v. Empress*, (3 C. W. N., 627), followed.

[28. All. page. 625.]

(C.) **BALLI PANDEY v. CHITTAN.**

CRIMINAL PROCEDURE CODE SECTIONS 250, 423 (1) (d)—*Frivolous complaint—Compensation—Appeal—Powers of appellate Court.* Held that an appellate Court is not empowered to grant compensation under section 250 of the Code of Criminal Procedure, in view of the express terms of section 250 "Magistrate by whom the case is heard." Section 423 (1) (d) cannot be taken to confer such power.

[28. All. page. 629.]

(D.) **EMPEROR v. JAGDEO SINGH.**

CRIMINAL PROCEDURE CODE, SECTION

110—*Security for good behaviour—Subsequent conviction—For forfeiture of bond—Imprisonment for unexpired portion of the period for which security had been given.* Held that where a person has given security for good behaviour and his security is subsequently forfeited the amount of his forfeited bond may be exacted, but he cannot be also committed to prison for the unexpired portion of the term for which security had been taken.

[28. All. page. 683.]

(E.) **EMPEROR v. DWARKA KURMI.**

CRIMINAL PROCEDURE CODE, SECTION 288—*Evidence—Statements made before Magistrate retracted before Court of session.* In a capital case certain witnesses, who had stated before the committing Magistrate that they had seen the accused striking the deceased, withdraw their statements before the Court of Session and gave evidence exculpating the accused. The Sessions Judge, considering the evidence given before him by these witnesses to be untrue and acting under section 288 of the Code of Criminal Procedure, admitted in evidence the statements of these witnesses made before the committing Magistrate.

Held that such statements were rightly admitted and when admitted were on the same footing as the other evidence on the record. *Queen-Empress v. Dhan Sahai*, I. L. R., 7 All, 862; *Queen-Empress v. Jeochi*, I. L. R., 21 All, 111; *Queen-Empress v. Jawahir*, Weekly Notes, 1888, p. 356. *Queen-Empress v. Nirmal Das*, I. L. R., 22 All., 445, and *Umar v. Empress*, 22 Panj- Rec., Cr. J., 132, referred to.

[28. All. page. 705.]

(F.) **EMPEROR v. RAM KHILAWAN.**

ACT—1860—XLV (INDIAN PENAL CODE), SECTIONS 193 AND 203—*False evidence—Accused person giving or fabricating false evidence for the purpose of concealing his own guilt.* Held that an accused person cannot be charged either with giving or fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged.

[29 All. page 7.]

(A.) EMPEROR v. MEHRBAN HUSAIN.

CRIMINAL PROCEDURE CODE, SECTION 203—*Complaint—Jurisdiction—Dismissal of complaint no bar to the cognizance of a fresh complaint in pari materia.* There is nothing to prevent a Magistrate from entertaining a second complaint made against the same person even though the second complaint may be connected with a previous complaint which has already been dismissed under the provisions of section 203 of the Code of Criminal Procedure. *Queen-Empress v. Umedan*, Weekly Notes, 1895, p. 86, followed. *Dwarka Nath Mondul v. Beni Mudhab Bunerji*, I. L. R., 28 Cal., 652, and *Mir Ahwad Hosain v. Mahomed Askari*, I. L. R., 29 Cal., 726, referred to. *Queen-Empress v. Adam Khan*, I. L. R., 22 All., 106, distinguished.

[29 All. page 24.]

(B.) EMPEROR v. BUDHAN.

CRIMINAL PROCEDURE CODE SECTION 339—*Pardon—Pardon granted after accused has had an opportunity of cross-examining the witnesses for the prosecution—Withdrawal of pardon and subsequent commitment.* Where a pardon was tendered by a Magistrate to an accused person after he had had an opportunity as an accused person of cross-examining the witnesses for the prosecution, and on its appearing that he had not made a full and true disclosure of the facts of the case such pardon was withdrawn and he was committed along with his co-accused to the Court of Session. *Held* that the commitment was not open to objection. *Queen-Empress v. Brij Narain Man*, I. L. R., 20 All., 529, followed.

[29 All. page 25.]

(C.) EMPEROR v. AMRIT LAL.

ACT—1860—XLV (INDIAN PENAL CODE), SECTIONS 62 AND 406—*Criminal breach of trust—Sentence.* *Held* that special sentence provided for by section 62 of the Indian Penal Code is a sentence which should only be inflicted in rare cases—those in which crimes of an atrocious nature are exposed or in

which offences have been committed under aggravated circumstances—*Queen v. Mahomed Akhbar*, 12 W. R., Cr. R., 17, followed.

[29 All. page 46.]

(D.) EMPEROR v. ISHRI.

ACT—1860—XLV (INDIAN PENAL CODE), SECTIONS 456—*Lurking-house-trespass by night—Intention—Burden of proof.* The accused was found inside the house of the complainant at midnight, and his presence was discovered by the wife of the complainant crying out that a thief was taking away her *hansli*. The evidence of the complainant clearly showed that the accused was not there with the consent, or at the invitation or for the pleasure of the complainant. *Held* that the accused was properly convicted under section 456 of the Indian Penal Code, it being for him to show that his intention was under the circumstances innocent. *Brij Basi v. The Queen-Empress*, I. L. R., 19 All., 74, distinguished. *Balmakand Ram v. Ghansamram*, I. L. R., 22 Cal., 391, followed.

[29 All. page 137.]

(E.) BHAGWAN SINGH v. HARMUKH.

CRIMINAL PROCEDURE CODE, SECTION 250—*Frivolous complaint—Jurisdiction—Complaint dismissed without issue of process.* *Held* that section 250 of the Code of Criminal Procedure is not applicable to a case in which a complaint is dismissed without any process being issued for the attendance of the person against whom such complaint is made.

[29 All. 138].

(F.) EMPEROR v. SUGHAR SINGH

ACT—872—I (INDIAN ACT) SECTION 114—*Presumption—Possession of stolen property.* *Held* that the finding in the possession of a person six months after the commission of a dacoity of articles consisting of jewelry of a very ordinary type and by no means distinctive appearance, is not sufficient to form the basis of a conviction for participation in the dacoity. *Queen-Empress v. ...* I. L. R., 6 All., 224, and *... Queen-Empress*, I. L. R., 11 Cal., ... referred to.

(29 All. page 141.)

[A.] **EMPEROR v. Kushali.**

ACT—1860—XLV (INDIAN PENAL CODE), SECTIONS 280 AND 420—*Definition of coin—Uttering false coin—Cheating* Where the offence charged consisted of selling or pawning as genuine gold mohars of the reign of Shahjahan silver rupees of that reign which had been guilt or in some way covered over with gold, it was held that the offence would be that of cheating and not that of uttering false coin. A gold mohar of the reign of Shahjahan cannot be deemed to be "coin" within the meaning of section 230 of the Indian Penal Code, as it is not used for the time being as money. *Regina v. Bapu Yadav*, 11 Bom. H. C. Rep., 172, followed. *Queen v. Kung Beharee*, 5 N. W. P., H. C. Rep., 187, distinguished.

[27 Mad., page 237.]

[B] **BANDANU ATCHAYYA v. EMPEROR.**

CRIMINAL PROCEDURE CODE, ss. 366, 367—*Mode of delivering judgment and its contents—Judgment written and delivered after conviction of prisoners—Defect vitiating conviction.* Where a judgment in a criminal trial, was written and delivered some days after the prisoners were convicted and sentenced:—*Held* that this was a violation of sections 366 and 367 of the Code of Criminal Procedure and was more than an irregularity. It was a defect which vitiated the convictions and sentences. *Queen-Empress v. Hargobind Singh*, (L. L. R., 14 All., 242), approved.

[27 Mad., page 238.]

[C.] **MOHIDEEN ABDUL KADIR v. EMPEROR.**

CRIMINAL PROCEDURE CODE, s. 342—*Examination of accused—Filling gap in prosecution evidence by questioning accused—Charge of defamation—Failure to prove making and publication—Irregularity.* Eight persons were charged with defamation by making and publishing a certain petition regarding the conduct of the complainant. Though other evidence was adduced by the prosecution, it was not proved that the accused made and published the matter which was alleged to be

defamatory. The Magistrate, however, asked the accused if they had signed the petition, and accepted their answers as proving that they had and as relieving the prosecution from proving the making and publication of the alleged defamatory matter by the accused. He convicted the accused:—*Held* that the convictions must be set aside. A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under section 342 of the Code of Criminal Procedure. The omission to prove the making and publication of defamatory matter is more than an irregularity; it is a defect which vitiates the conviction.

[27 Mad., page 271.]

[D.] **RAMASWAMI GOUNDEN v. EMPEROR.**

EVIDENCE ACT—I of 1872, s. 114 (b)—*Evidence of accomplice—Necessity for corroboration.* The case against an accused, who was tried on a charge of murder, depended entirely upon the evidence of the first witness, who deposed that he had worked for accused prior to and at the date of the murder; that the woman whom accused was charged with murdering had also worked for accused, and had become *enceinte* by him; that she had frequently demanded money of accused and at last threatened to disgrace him if he did not pay her; that on the evening of the murder accused obtained a crow-bar from the witness, and, later on, went to where the deceased was sleeping, when the witness heard a cry, and, on secretly approaching the spot, saw accused strike the deceased on the head with a crow-bar; that witness then ran away; that accused called him; that he went to the spot, and accused asked him to put the body in an empty pit some distance off; that witness refused to help, whereupon accused dragged the body to the pit and threw it in; that next morning accused threatened to murder the witness if he mentioned what had happened; that some fifteen days later, after a quarrel with accused, witness ran away and gave information to the brother of the deceased woman and then to the police, who, with some villagers, were taken by witness to the pit, where the

body was found and, subsequently, identified. The witness stated that he had not given information earlier because he was afraid. The only evidence adduced in corroboration of any part of this witness's evidence was that the brother and sister of the deceased, had heard of the relations between accused and the deceased, that the body was found in the pit, and that death was shown to have been caused, at about the time and place stated by the first witness, by fracture of the skull, which might have been caused by a blow from a crow-bar. On its being contended, on behalf of the accused, that the first witness was an accomplice, or, if not an accomplice in the strict sense of the term, that he was no better than an accomplice and that his evidence should therefore be corroborated in material particulars, and that in the absence of such corroboration the accused should not be convicted:—*Held* (per Sir SUBRAHMANIA AYYAR Offg. C. J., and per BHASHYAM AYYANGAR, J., on reference), that the witness was not an accomplice in the crime for which the accused was charged inasmuch as he had not been concerned in the perpetration of the murder itself. Even assuming that, after the murder had been committed, the witness had assisted in removing the body to the pit, and that he could have been charged with concealment of the body under section 201 of the Penal Code, that was an offence perfectly independent of the murder, and the witness could not rightly be held to be either a guilty associate with the accused in the crime of murder, or liable to be indicted with him jointly. The witness was therefore not an accomplice and the rule of practice as to corroboration had no application to the case. *Per* BODDAM, J.—Even if the witness was not an accomplice having regard to the fact that he was cognizant of the crime for fifteen days without disclosing it and that he had a cause of quarrel with the accused at the time when he did disclose it, it would be most unsafe to act upon his evidence unless it was corroborated in some material particular connecting the accused with the crime. The rule of practice as to the necessity for corroboration of the evidence of an accomplice discussed. *Queen v. Chando Chandalinnee*, (24 W. R. (Cr.), 55), *Ishan*

Chandra Chandra v. Queen-Empress, (I. L. R., 21 Calc., 328), and *Alimuddin v. Queen-Empress*, I. L. R., 23 Calc., 361 at p.) 365), discussed.

[27 MAD., 510].

[A.] IN THE MATTER OF
RAMASAMY CHETTY.

CRIMINAL PROCEDURE CODE ART. 15—“*Criminal Trial*”—*Appeal*—*Order to furnish security for keeping the peace*—*Judgment*.”] Petitioner had been ordered by a Head Assistant Magistrate to furnish security for keeping the peace, under section 107 of the Code of Criminal Procedure. The order was confirmed on appeal. An application to the High Court to revise the order came before a single Judge and was rejected. This appeal was filed against the last-mentioned order:—*Held*, that no appeal lay. *Per* THE OFFG. C. J.—The order requiring security was an order in a criminal trial, and, in consequence, the order passed in revision was also an order in a criminal trial. *Per* RUSSELL, J.—The order appealed against was not a “judgment” within the meaning of article 15.

[27 Mad., page 525].

[B.] EMPEROR *v.* MUTHU-
KOMARAN.

CRIMINAL PROCEDURE CODE ACT V OF 1898 s. 123—*commitment to prison for failure to give security to be of good behaviour*—“*Sentence of imprisonment*.”] When a person is committed to prison under section 123 of the Code of Criminal Procedure for failure to give security to be of good behaviour, he is not undergoing a “sentence of imprisonment” within the meaning of section 397 of the Code.

[27 MAD. page 551].

[C.] ANNAKUMARU PILLAI *v.*
MUTHUPAYAL.

POSSESSION—*CHANKS*—*Theft*—*Charge of stealing chanks*—*Shellfish taken from beds in sea*—*Perennation*—“*Possession*” of complainant—*Subject of [theft]*. “*Chanks*” (popularly included among shell-fish, but really large molluscs) are found buried in beds of sand or in the sandy crevices of

coral reefs in Palk's Bay a large bay landlocked by British dominions for eight-ninths of its circumference and containing numerous islands which form part of the districts to which they are adjacent on the shores of India and Ceylon. It was shown by evidence that this bay (as well as parts of the adjacent Gulf of Mannaar) had been effectively occupied for centuries by the inhabitants of India and Ceylon, respectively; that the "chanks" found therein had for centuries been the monopoly of the rulers of the country, both in India and Ceylon, and that licenses to gather them had been granted by sovereign; and that "chank royalty" was one of the heads of revenue on which permanent assessment of an adjacent zamindari was fixed in 1802. Petitioner, who had leased from the Rajah of Ramnad the "chank beds" five miles off the coast of his zamindari, charged the counter-petitioners with having committed the offence of theft of "chanks" from these beds. On the defence being raised that "chanks" were fish, and were *feræ naturæ* and that those in question had been taken from beds in the open sea and had therefore not been taken from the possession of the complainant and could not be the subject of theft:—*Held*, that the "chanks" in question were capable of being the subject of theft.

[28 Mad. page 17].

[A.] VENKATRAMA CHETTY v. EMPEROR.

DISTRICT MUNICIPALITIES ACT—(MADRAS) ACT III OF 1889, s. 4—*Allowing offensive matter to flow into a "street"—Discharge into drains not forming part of street—Definition of street.*] A defendant was charged under section 4 of the Madras District Municipalities Act with allowing offensive matter to flow from his house into a street. The matter flowed into a drain or ditch constructed along the side of the roadway. On the question as to whether any offence had been committed:—*Held*, that a "street" is any way or road in a city having houses on both sides; and that in consequence this definition excluded the drain or ditch on either side of the roadway; that the drain was not part of the "street" and that the offence charged had not been committed.

[28 Mad. page 37].

[B.] IN THE MATTER OF ANUSOORI SANYASI.

CRIMINAL BREACH OF CONTRACT ACT—XIII OF 1859, s. 2—*Complaint against workman of failure to complete work—Completion of work by complainant prior to complaint—Maintainability of charge.*] An employer applied for an order under section 2 of Act XIII of 1859, alleging that a workman had received an advance on account of the work and had failed to perform his part of the contract. Prior to lodging the complaint, the employer had completed the work, and he claimed an order for the repayment of the advance:—*Held*, that no order could be made. The section only applies when the work is uncompleted when the complaint is made. If the work has been completed when the complaint is made, the Magistrate has no jurisdiction under the section, though the employer has a remedy against the workman in the Civil Courts. *High Court proceedings*, dated the 29th March 1865, (Weir's 'Law of offences,' 445), approved. The offence created by the act is not the neglect or refusal of the workman to perform his contract but the failure of the workman to comply with an order made by the Magistrate that the workman should repay the money advanced or perform the contract. *King Emperor v. Takasi Nukayya* (I. L. R., 24 Mad., 660), approved.

[28 Mad. page 90.]

(C.) KOTAMRAJU VENTAT RAYADU v. EMPEROR.

INDIAN PENAL CODE—ACT XLV OF 1860, ss. 465, 471—*Forgery and using as genuine a forged document.*] In order to obtain admission to the Matriculation Examination of the Madras University as a private candidate, V was required to produce to the Registrar a certificate signed by the headmaster of a recognised high school that he was of good character and had attained his twentieth year. V fabricated the headmaster's signature to such a certificate and forwarded it to the Registrar:—*Held* (SUBRAHMANYA AYYAR and DAVIES, JJ., dissenting) that V was guilty of forgery, *Per* Sir ARNOLD

WHITE, C.J.—The offence of forgery is complete if a document, false in fact, is made with intent to commit a fraud, although it may not have been made with intent to commit a fraud, although it may not have been made with any one of the other intents specified in section 463. It was not necessary having regard to the wording of section 24 that the accused should have intended to cause both wrongful gain to himself and wrongful loss to the University. Both intentions, however, were present in this case. Moreover, the false document had been made with intent to support a "claim or title" within the meaning of those words as used in section 463. A claim to be admitted to a University examination is a claim within the meaning of section 463. It was more clearly so in the present case as the accused had a "claim" to be exempted from the production of an attendance certificate, upon satisfying certain conditions precedent. An intended deprivation of property is not an essential element of an intention to defraud. *Per BENSON, J.*—Those decisions which proceeded on the ground that an act is not fraudulent unless it causes or is intended to cause loss or injury to some one would seem to take too narrow a view of the meaning of the word "fraudulently" as used in the Code. The act of the accused was fraudulent not merely by reason of the advantage which he intended to secure for himself by means of his deceit, but also by reason of the injury which must necessarily result to the University and through it to the public from such acts if unrepressed. *Per SUBRAHMANIA AYYAR.*—The document was not made fraudulently within the meaning of section 464 and 463 of the Code. Deprivation of property, actual or intended, does not constitute an essential element in regard to offences falling under sections 465 and 471 of the Indian Penal Code: but the deception must involve some loss or risk of loss to an individual or to the public. It is not enough to show that the deception was intended to secure an advantage to the deceivers. *Per DAVIES, J.*—It had not been shown that the accused in making the document had either of the intentions neces-

sary to constitute it a false document within the meaning of section 464. A mere intention to deceive does not necessarily imply an intention to defraud or to cause wrongful loss to one person or wrongful gain to another. A person to be defrauded must suffer some harm or damage or injury and there was no evidence that the Registrar, as representing the University, had suffered in any of these respects. The University had been deprived of nothing and, on the other hand, had profited by the application by the accused. Moreover the intention of the accused was to subject himself to examination, which could not be deemed a thing of value. If he failed, it ended in nothing. If he passed, he became entitled to a certificate not in consequence of the false writing but on his own merits.

[28 Mad., page 255.]

✓ [A.] MAHOMED ABDUL MENNAN
v. PANDURANGA ROW

CRIMINAL PROCEDURE CODE—ACT V OF 1898, ss. 203, 435, 439—*Complaint—Complaint dismissal of—Revival of proceedings—Illegality*] When an original complaint is dismissed under section 203 of the Code of Criminal Procedure no fresh complaint on the same facts can be entertained so long as the order of dismissal is not set aside by a competent authority, *Mir Ahwad Hussein v. Mahomed Asari* (I. L. R., 29 Cal., 726), differed from.

[28 Mad., page 304.]

[B.] ATGARASAWMI TEVAN v.
EMPEROR.

CRIMINAL PROCEDURE CODE s. 379—*Theft—Dishonest taking—Bona fide claim of ownership by accused over property in possession of third party—Disputed ownership of land—Possession summarily taken by Revenue authorities—Province of Civil Courts to decide questions of ownership between Government and private persons.*] The petitioner was convicted of theft of certain bamboos which he said he cut on his own patta land, but which the prosecution alleged he cut on Government poramboke land adjacent to his own. Prior to his conviction, disputes had arisen between the Revenue authorities and the petitioner regarding the ownership of

the land. The petitioner contended that he *bona fide* believed the bamboos to be his property at a time he cut and removed them. The Magistrate, finding that the Revenue authorities had taken possession of the land at the time the bamboos were removed convicted the petitioner :—*Held* that the conviction was wrong. The questions to be considered were, (1) whether the bamboos did in fact belong to the petitioner or to Government ; (2) whether if they did not belong to the petitioner he *bona fide* believed they did. It is the province of the Civil Courts to decide questions of ownership of land between Government and private parties, and if the Revenue authorities take summary possession of land as in the present case, they become mere trespassers and there is nothing dishonest in the owner taking possession of his own property.

[28 Mad. page 308.]

[A.] KAMATCHI NATHAN CHETTY
v. EMPEROR.

INDIAN PENAL CODE—ACT XLV OF 1860, s. 193—*Giving false evidence—Deposition of witness upon which assignment of perjury based not taken in manner required by law—Conviction—Unsustainability of.* A was convicted of giving false evidence in a judicial proceeding. It was proved that after his evidence had been recorded, his deposition upon which the assignments of perjury were based was read over to him by the Court clerk, in a place where neither the Judge nor vakils were present :—*Held*, that the conviction could not be sustained. The deposition upon which the prosecution was based not being properly taken in accordance with law, should not have been admitted in evidence.

✓ [28 Mad., page 310].

[B.] CHINNATHAMBI MUDALI v.
SALLA GURUSAMY CHETTY.

CRIMINAL PROCEDURE CODE—ACT V OF 1898, s. 259—*Complaint—Absence of complainant at hearing—Discharge of accused—Revival of proceedings on fresh complaint*

—*Jurisdiction.*] Where an order of discharge under section 259 of the Code of Criminal Procedure has been passed by a Magistrate, such order will not preclude him from proceeding with the case on a fresh complaint. An order of discharge under section 259 of the Code of Criminal Procedure is not an acquittal nor has it the effect of an acquittal under section 403.

[28 Mad., page 454].

[C.] ALINGAL KUNHINAYAN v.
EMPEROR.

PENAL CODE ACT XLV OF 1860 *Right of private defence of body—Extent of right.* The view that a person should not exercise his right of self-defence if by running away he can avoid injury from his assailant, places a greater restriction on the right of private defence of the body than the law requires. The extent to which the exercise of the right will be justified will depend not on the actual danger but on whether there was reasonable apprehension of such danger.

[28 Mad. page 565.]

[D.] EMPEROR, APPELLANT v.
JOUNALAGADDA VINKAT-
RAYUDU RESPONDENT.

PENAL CODE ACT XLV OF 1860, s. 182—*Criminal Procedure Code, Act V of 1889 ss. 154, 162—False information to a village Magistrate.* An offence under section 182 of the Penal Code is committed by a person giving false information to a village Magistrate charging another with having committed an offence. Where such information is given with the view to it being passed on to the Station house Officer, who, on receiving the information, takes a complaint in writing from such informant, the complaint is one taken under section 154 and not under section 162 of the Criminal Procedure Code. *The Queen v. Perrianan* and *The Queen v. Naraina* (I. L. R., 4 Mad., 241), distinguished.

[29 Mad., page 89.]
[A.] SUPPATEVAN v.
EMPEROR.

PENAL CODE ACT XLV OF 1860, s. 193—*Judicial proceeding*—*Oaths Act X of 1873, ss. 4, 5—Criminal Procedure Code—Act V of 1898, s. 164 Magistrate empowered to administer oath when taking statements under section 164 of the Criminal Procedure Code.* A Magistrate taking statements under section 164 of the Code of Criminal Procedure is acting in discharge of duties imposed on him by law and is empowered to administer an oath under sections 4 and 5 of the Oaths Act. An investigation under Chapter XLV of the Code of Criminal Procedure is a stage of a judicial proceeding and a person making on oath a false statement in the course of such investigation commits an offence under section 193 of the Penal Code. *Queen-Empress v. Alagu Kone*, (I. L. R., 16 Mad., 421), followed.

CRIMINAL PROCEDURE CODE ACT V OF 1898, s. 147—*Construction of the words "concerning any land"—Landlord and tenant—Right of tenant to enclose cultivable land by a wall.* The enclosing by a tenant of cultivable lands by a wall instead of a hedge is not *prima facie*, an interference with the landlord's rights and ought not to be interfered with under section 147 of the Code of Criminal Procedure by a Magistrate, being a matter to be settled by a Civil Court. In such cases, if a breach of the peace is apprehended, security must be taken from the party in possession. The words "concerning the use of land" in section 147 of the Code of Criminal Procedure cannot be qualified and the section construed as if it contained words that the uses to which dispute relates is a user by a party than the other party in possession. *The Empress v. Ganapat* (Kalwar, 4 C. W. N., 779), not followed. *Subba v. Irinca* (I. L. R., 7 Mad., 401), referred to followed.

[29 Mad., page 91.]
[B.] EMPEROR v. CHELLAN.
CRIMINAL PROCEDURE CODE, s. 307—*Procedure of High Court on reference under—'Opinion' of jury, what is.* Where the Sessions Judge disagreeing with the jury, refers a case to the High Court under section 307 of the Code of Criminal Procedure, the High Court is to form its own opinion on the evidence. The 'opinion' of the jury in section 307 of the Code of Criminal Procedure is the conclusion of the jury, and not the reasons on which that conclusion is based. *Per Sir SUBRAHMANIA AYYAR*, Offg. C. J., and *BODDAM, J.*—In references under section 307 of the Code of Criminal Procedure, although it may be expedient to have before the Court the reasons of the jury for the view taken by them, when any have been given the circumstance that no such reasons have been ascertained does not warrant this Court to decline to go into the evidence and to arrive at its own judgment, after giving due weight to the views taken by the Judge and the jury as to the guilt or innocence of the accused.

[29 Mad., page 100.]
(D). SURYANARAYANA ROW v.
EMPEROR.

CRIMINAL PROCEDURE CODE ss. 476, 435, 439—*Power of High Court to interfere in proceedings under section 476—Madras Act III of 1869, scope of—Judicial Proceedings—Pleader, propriety of imputations made by.*—The High Court has power to revise proceedings under section 476 of the Code of Criminal Procedure when such proceedings are null and void for want of jurisdiction. *Eranholi Athan v. King-Emperor* (I. L. R. 26 Mad. 98), referred to and distinguished. Madras Act III of 1869 does not authorise the issuing of summons in a departmental inquiry for bribery. The pendency of an appeal by the accused, who had paid the fine imposed on him, would not give any Court authority or power to arrest him or to take recognisances from him for appearing at any further enquiry. The presenting of a petition imputing improper motives to a Magistrate who is illegally detaining a person to take recognisances from him to enforce his attendance for the foregoing purpose will not justify any action by such Magistrate under section 476 of the Code of Criminal Procedure.

[29 Mad., page 97]
[C.] ARUNACHELLAM CHETTIAR
v. CHIDAMBARAM CHETTIAR.

ture as the offence is not committed in the course of a *judicial proceedings*, nor is it brought to his notice in the course of such proceedings.

29 Mad. page 122.

(A.) KANNAMBATH IMBICHI
NAIR v. MANATHANATH RAMAR
NAIR.

CRIMINAL PROCEDURE CODE, ACT V OF 1898, s. 195, cls. 6, 7—*Appeal against order of District Court granting sanction—Power of High Court on such appeal.* An appeal lies to the High Court against an order of the District Judge granting sanction under clauses 6 and 7 of section 195 of the Code of Criminal Procedure. Where such order has revoked the sanction granted by the Munsif for prosecution under certain sections of the Indian Penal Code but granted sanction to prosecute under other sections, and it is competent to the High Court on appeal therefrom, not only to revoke the sanction granted but also to grant the sanction refused.

✓ (29 Mad. page 126.)

(B.) EMPEROR v. CHINNA KAILI-
APPA GOUNDEN.

CRIMINAL PROCEDURE CODE s. 203—*Dismissal of complaint under, no bar to Magistrate rehearing complaint.* On a reference by the Sessions Judge as to whether it was competent to a Magistrate, after dismissing a complaint under section 203 of the Code of Criminal Procedure, to rehear the complaint, when such order of dismissal had not been set aside by a higher Court:—*Held*, (SUBRAHMANYA AYYAR and DAVIES JJ., dissenting) that the dismissal of a complaint under section 203 of the Code of Criminal Procedure does not operate as a bar to the rehearing of the complaint by the same Magistrate, even when such order of dismissal has not been set aside by a competent authority. *Mahomed Abdul Mennan v. Panduranga Row*, (1. L. R. 28 Mad, 256) dissented from. *Dwarka Nath Mondul v. Beni Madhab Banerjee*, (1. L. R., 28 Calc. 652), approved and followed. *M'r Ahwad Hossein v. Mohamed Askri*, (1. L. R., 29 Cal., 726), approved and followed. *Per Sir ARNOLD WHITE, C. J.*—The

power to enquire into an offence must be held to exist in a Magistrate until something has occurred to divest the Magistrate of this jurisdiction. An order under section 203 of the Code of Criminal Procedure is not a judgment to which the provisions of section 369 will apply. The principle of *autrefois acquit* will not apply as there is no trial when the complaint is dismissed under section 203 of the Code of Criminal Procedure. The provisions of sections 147, 400, 215 and 210 of the Code of Criminal Procedure of 1872 compared with the corresponding sections 203, 403, 253 and 242 of the present Code. The alterations in the present Code in regard to the sections under consideration were merely drafting alterations and were not intended to effect and did not effect any alteration in the law as laid down by the old Code. *Per BENSON, J.*—The decisions in *Queen-Empress v. Adam Khan* (1. L. R., 22 All. 106), *Nilraton Sen v. Jogesh Chundra Bhattacharjee*, (1. L. R., 23 Calc., 983), and *Mahomed Abdul Mennan v. Panduranga Row*, (1. L. R. 28 Mad., 255), do not apply, as in those cases it was not the same but a different Magistrate who proceeded to rehear the complaint. There is no bar under the Code to the complaint being reheard unless the proceedings have reached such a stage of finality that an acquittal or an order operating as such under the Code is recorded. *Per MOORE, J.*—The maxim *nemo bis reus* has no application to an order under section 203 of the Code of Criminal Procedure, though it may be a good argument where an accused has been discharged under sections 253 and 259 of the Code. *Per SUBRAHMANYA AYYAR J.*—Although the technical doctrine of *autrefois acquit* will apply only to acquittals, the principle underlying such doctrine, that a person should not, in respect of an offence, be in jeopardy of prosecution more than once, applies to cases where the prosecution failed to reach the stage of acquittal without any fault on the part of the accused, unless its application is precluded by the provisions of the Code. Acquittal in common law means as acquittal after verdict or sentence. The Legislature having by sections 333, 494 and 248

of the Code of Criminal Procedure given the term a wider significance, the explanation to section 408 was intended to guard against the term being applied to cases where the plea of *autrefois acquit* was not technically applicable and not to bar the application of the aforesaid analogous principle where justice required it. There being thus no legal provision to the contrary, an order dismissing a complaint or discharging the accused, must, on the above principle, operate as a bar to further enquiry into the same matter as long as such order remains in force. Orders under sections 203, 253 and 259 of the Code of Criminal Procedure stand on the same footing as regards the application of this doctrine. There is no inherent power in a Magistrate to revise his own order of dismissal or discharge.

[29 Mad., page 149]

(A.) ISMAL ROWTHER v. SHUNMA-GAVELU NADAN.

CRIMINAL PROCEDURE CODE.—ss. 195, 537—*Sanction, want of, only an irregularity and not fatal to the prosecution.* The general provisions of section 195 of the Code of Criminal Procedure ought not to be so construed as to nullify the special provisions of section 537 (b). The want of sanction required by section 195 of the Code of Criminal Procedure is not fatal to a prosecution unless the accused is prejudiced thereby. *Raj Chunder Mozumdar v. Gour Chunder Mozumdar*, (I. L. R., 22 Calc 176), dissented from.

[29 Mad., page 185].

(B.) ABU BAKER v. THE MUNICIPALITY OF NEGAPATAM.

DISTRICT MUNICIPALITIES ACT (MADRAS) IV of 1884, ss. 197, 191—*Market, definition of—Use of, as market, what amounts to.* Private property is used as a market when it is used as a public place for buying and selling. Where a private market had been ordered to be closed, a person using the place for selling fish and flesh after a license had been refused is guilty of an offence under section 197 of the Madras District Municipalities Act, or at any rate, of an offence under section 191.

[29 Mad., page 187].

(C.) EMPEROR v. PALANIAPPA-VELAN.

ACCUSED PERSON—*Notice to accused person necessary before order in his favour can be set aside.* An order by a Magistrate directing payment of compensation to the accused ought not to be set aside on appeal without notice to the accused. It will also be safer to give notice to the officer appointed by the Local Government referred to in section 422 of the Code of Criminal Procedure.

[29 Mad., page 188].

(D.) EMPEROR v. KARUPPANA PILLAI.

CRIMINAL PROCEDURE CODE—s. 423—*Order under directing Payment of costs not an enhancement of sentence—Court Fees Act VII of 1870.* An order under section 31 of the Court Fees Act directing the accused, on appeal against conviction, to pay the costs of the complainant is not an enhancement of the sentence. *Madan Mondal v. Haran Ghose*, (I. L. R., 20 Calc., 687), approved. *Queen-Empress v. Tangavelu Chetty*, (I. L. R., 22 Mad., 153), dissented from.

[29 Mad., page 190].

(E.) MUTHIAHCHETTI v. EMPEROR.

CRIMINAL PROCEDURE CODE—ACT V of 1898, s. 106—*Appellate Court cannot bind over to keep peace when Lower Court not one of the class referred to in the section, and no breach of the peace committed.* An accused person cannot be bound over to keep the peace under section 106 of the Code of Criminal Procedure unless he is convicted of an offence of which a breach of the peace is a necessary ingredient and unless it is found that a breach of the peace has actually occurred. An appellate Court cannot exercise the power under the section when the accused has not been convicted by a Court such as is referred to in the section.

[29 Mad., page 192].

(F.) EMPEROR v. RAMASAWMY RAJU.

MADRAS DISTRICT POLICE ACT XXIV

of 1859, s. 44—*Police constable not returning to duty after expiry of leave guilty of offence under.*) A police, constable, who, having obtained casual leave, does not return to duty on the expiry of such leave and stays away without obtaining fresh leave, is guilty under section 44 of Act XXIV of 1859 of the offence of ceasing to perform the duties of his office without leave.

[29 Mad., page 936].

(A.) RANGACHARLU v. EMPEROR.

CRIMINAL PROCEDURE CODE—s. 421 *Summary rejection of appeal.*] Where a petition of appeal signed by a pleader is presented to a Magistrate by the party in person, the appeal cannot be dismissed without giving the pleader a reasonable opportunity to appear. Where the conviction is based on the evidence of witnesses whose credibility is impeached by the accused on reasonable grounds, the appeal should not be summarily rejected under section 421 of the Code of Criminal Procedure without sending for the records.

[29 Mad., page 237].

(B.) KADER BATCHA v. KADER BATCHA ROWTHAN.

CRIMINAL PROCEDURE CODE—ACT V OF 1898, s. 147—*Dispute as to right to use a mosque within the section—Charter Act, s. 15.*] An order under section 147 of the Code of Criminal Procedure, declaring possession to be with a certain person is illegal when there has been no enquiry as to the party in possession and will be set aside under section 15 of the Charter Act. A dispute as to the right to use a mosque between persons claiming to be entitled to officiate as Kazi therein is a dispute coming within section 147 of the Code of Criminal Procedure.

[29 Mad., page. 331].

(C.) RUNGA AYYAR v. EMPEROR.

CRIMINAL PROCEDURE CODE—ACT V OF 1898, s. 476—*Power to direct proceedings conferred on Court and not on Magistrate trying—Dismissal of complaint without adjudication no bar to proceedings under.*] The power to direct a prosecution under section 476 of the Code of Criminal Pro-

cedure is conferred on the Court and not on the individual Magistrate who tried the case. Such power is not ousted by the dismissal, without adjudication of a complaint by the party in respect of the same offence under a sanction previously given by the Court.

[29 Mad., page 372].

(D.) EMPEROR v. CHINNAPAYAN.

CRIMINAL PROCEDURE CODE—ss. 243 252—*Trial of a warrant case as a summons case not a mere irregularity.*] Where a Magistrate in trying a warrant case does not adopt the course prescribed by section 252 of the Code of Criminal Procedure, but convicts the accused on his own admission without taking evidence and without framing a formal charge, such procedure is not a mere irregularity and the conviction will be set aside.

[29 Mad., page 373].

(E.) VYTHIANADA TAMBIRAN v. MAYANDI CHETTY.

CRIMINAL PROCEDURE CODE—ACT V OF 1898, s. 148 (3)—*Award of costs may be made within a reasonable time after disposal of the main question.*] An award of costs under section 148 (3) of the Code of Criminal Procedure should, in the usual course, be contemporaneous with the decision of the main question. Where, however, circumstances require the postponement of the award of costs, it should be made within a reasonable time after the disposal of the principal subject of the proceeding, in the presence of both parties.

(29 Mad., page 375.)

(F.) IN THE MATTER OF KUPPAMMAL.

CRIMINAL PROCEDURE CODE—ACT V OF 1898, ss. 517-523—*Sections not applicable where there was no trial and no evidence recorded.*] When a person charged before the Magistrate with criminal breach of trust in respect of certain jewels died before trial and before any evidence was recorded and the alleged owner of the jewels, which were recovered by the Police from the pledges and sent to the Magistrate along with the charge sheet applied to be put in prison, them unless sections 517 and 523 of the

Code of Criminal Procedure after enquiry as to their ownership:—*Held*, that section 517 of the Code of Criminal Procedure did not apply to the case. *Held further*, that as there was no evidence or finding about ownership, section 523 of the Code of Criminal Procedure did not apply and that the Magistrate was not bound to hold an inquiry simply to determine the ownership of the jewels.

[29 Mad., page 517].

[A.] IN THE MATTER OF
PONNUSAMI.

CRIMINAL PROCEDURE CODE ACT V OF 1898, s. 4 (o), and the *Cattle Trespass Act I of 1871 ss. 20, 22—Appeal lies against order made under section 22 of the Cattle Trespass Act.*] By section 4.(o) of the Code of Criminal Procedure, the word 'offence' includes an act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act; and a person against whom an order under section 22 of the Cattle Trespass Act is made is a "person convicted on a trial" and is entitled to appeal under section 407 of the Code of Criminal Procedure.

[29 Mad., page 558].

(B.) THOMAS v. EMPEROR.

CRIMINAL PROCEDURE CODE, ss. 222, 234—*Criminal breach of trust—Joinder in one trial of charges for two distinct items with another for a gross sum is not illegal—Construction of statute.*] Under section 222 of the Code of Criminal Procedure a charge of criminal breach of trust in respect of a gross sum, without specifying the items, is a charge for one offence within the meaning of section 234. Section 222 of the Code of Criminal Procedure does not apply only to cases where there is a general deficiency and the prosecution is unable to specify the particular items of the deficiency but also to cases where the items may be, but are not, specified. The joinder in one trial of charges of criminal breach of trust in respect of two distinct items with a charge in respect of a gross sum (the items constituting which may be but are not specified) is a joinder of only three charges, and is not bad as contravening the provi-

sions of section 234 of the Code of Criminal Procedure. "The essence of a code is to be exhaustive on the matter in respect of which it declares the law and it is not the province of Judge to disregard or go outside the enactment according to its true construction." *Subramania Aiyar v. King-Emperor* (I. L. R., 25 Mad. 61), distinguished.

[29 Mad., page 561].

[C.] SREEMAN KUMARA TIRU-MALRAJA BAHADUR, RAJAH OF KARVETNAGAR, v. SOWCAR LOOD GOVIND DOSS KRISHNA DOSS.

CRIMINAL PROCEDURE CODE Act V of 1898, s. 145—*Inquiry to be held before issuing preliminary order under—Jurisdiction of Magistrate—Failure of jurisdiction where Magistrate refuses to receive evidence which party is entitled to adduce under s. 145 (5).*] In order that a Magistrate may have jurisdiction to act under section 145 of the Code of Criminal Procedure, he must be satisfied from a Police report, or other information, that a dispute likely to cause a breach of the peace exists concerning any land, etc. Where there is no Police report the statement of interested parties ought to be received with great caution and ought not to be acted upon unless they are corroborated by the testimony of less interested persons. The opposite party also, ought to be given an opportunity of cross-examining the party making such statements before the Magistrate takes any action on them. Under section 145 of the Code of Criminal Procedure, a party who is required by a preliminary order to attend at the Magistrate's Court is entitled to show that no dispute likely to cause a breach of the peace exists or had existed, and it is not open to such Magistrate to refuse to receive such evidence when tendered. Where the Magistrate refuses to receive such evidence, his order will be set aside as having been passed without jurisdiction.

Per DAVIES, J.—A Magistrate acts *ultra vires* in clubbing together disputes relating to a large number of villages and treating them as one. Each village must stand on its own footing and the Magistrate should satisfy himself that a dispute existed in respect of all the villages.

He should ascertain, as regards each village, which party was in possession at the date of the order and confirm that possession.

The object of Chapter XIV of the Code of Criminal Procedure being to procure prompt action to avert breaches of the peace, the Legislature could not have contemplated under that chapter wholesale proceedings in regard to a large number of villages which, if the procedure above stated be adopted, would entail a prolonged enquiry.

[30 Mad., page 567].

(A.) NARAYANASWAMI NAIDU v. EMPEROR.

CRIMINAL PROCEDURE CODE s. 562—*Power conferred by section not confined to Courts of First Instance*].

The power of passing orders under section 562 of the Code of Criminal Procedure is not confined to Courts of First Instance.

Emperor v. Birch (I. L. R. 24 All. 306), approved.

[29 Mad., page 569].

(B.) MANAVALA CHETTY v. EMPEROR.

CRIMINAL PROCEDURE CODE ss. 227, 233, 234—*Joinder of more than three offences in netriol illegal—Trial not validated by striking out charge to cure such defect after case closed, though before judgment. Penal Code—Act XLV of 1860, ss. 478, 480—Offence of using false trademark—No acquisition of the trademark in the sense used in the English Act necessary under s. 478 of the Indian Penal Code.* A person selling soap not manufactured by P, in a box which bears the name of P as a soap manufacturer, uses a false trademark and is guilty of an offence under section 480 of the Indian Penal Code. It is not necessary to constitute an offence under section 478 that a trademark in the sense in which the word is used in the English Patents, Designs and Trademarks Acts should have been acquired; and the mark is none the less a false mark because it appeared on the box and not on the goods. Under sections 233 and 234 of the Code of Criminal Procedure, a person cannot be

charged with more than three offences at one trial; and the defects cannot be cured after the accused had pleaded and the case had closed, by amending the charges so as to reduce it to three offences. Although the words in section 227 of the Code of Criminal Procedure are wide enough to warrant a Court in altering a charge by striking out one of the charges at any time before judgment, the section does not warrant the striking out of a charge for the purpose of curing an illegality already committed and after the mischief which the Legislature intended to guard against had been done. *Subrahmaniam Ayyar v. King-Emperor*, (I. L. R., 25 Mad., 61) referred to and explained.

[30 Mad., page 44].

(C.) MARI VALAYAN v. EMPEROR.

CRIMINAL PROCEDURE CODE, ACT V OF 1898, ss. 297, 537—*Misdirection to jury—Judge bound to state all the elements of offence and deal with evidence, differentialing evidence against each of the accused—Failure to do so not a mere irregularity.* Under section 297 of the Code of Criminal Procedure, the Judge must explain to the jury all the essential elements of the offence with which the prisoner is charged. An omission to do so is not a mere irregularity within the meaning of section 537. It is a failure to comply with an express provision of the law and will vitiate the conviction. The Judge should also point out to the jury the evidence against each of the accused and the circumstances which distinguish the cases of some of the accused from that of the others. *Mangan Dass v. Emperor*, (I. L. R., 29 Cal., 379), referred to and followed.

[30 Mad. page 48].

(D.) PARAMASIVA PILLAI v. EMPEROR.

CRIMINAL PROCEDURE CODE, s. 106—*Sentence, enhancement on appeal—Maintaining a sentence in its entirety though acquitting on some of several charges is enhancement—Appellate Court cannot make an order for security when original conviction not by one of the Courts specified in section 106.* Where the Magistrate con-

victed the accused of two distinct offences and passed only a single sentence for both and the Appellate Court acquitting the accused of one of the offences maintained the sentence in its entirety:—

Held, that this amounted to an enhancement of the sentence passed for the offence, the conviction for which alone was maintained. An order for security under section 106 of the Code of Criminal Procedure cannot be made by the Appellate Court unless the conviction appealed against was by a Court of the description specified in the first paragraph of the section.

[30 Mad., page 94].

[A.] **EMPEROR v. DORAISWAMY MUDALI.**

CRIMINAL PROCEDURE CODE, ACT V of 1898, s. 531.—*Section applies to cases where Magistrate tries in respect of offences committed outside his jurisdiction.* There is nothing in the language of section 531 of the Code of Criminal Procedure to confine its operation to cases where offences committed within the jurisdiction of a Court are tried by such Court outside the limits of the local area of its jurisdiction. A finding, sentence or order regularly passed by a Court in the case of an offence committed outside its local area cannot be set aside when no failure of justice has taken place.

[30 Mad., page 103].

[B.] **BHAKTHAVATSALU NAIDU v. EMPEROR.**

CRIMINAL PROCEDURE CODE, s. 423.—*Sentence, enhancement of.*—*No enhancement when aggregate period of imprisonment reduced, although fine imposed in addition.* Where the aggregate period of imprisonment awarded on appeal is to any extent less than the period of the original sentence, the fact that a fine is imposed by the Appellate Court is no enhancement of the sentence within the meaning of section 423 of the Code of Criminal Procedure. Where the Appellate Court reduced a sentence of one month's imprisonment to five days but imposed in addition a fine with two week's imprisonment in default:—*Held*, that the sentence of the Appellate Court was not illegal.

[30 Mad., page 134].

[C.] **EMPEROR v. KANDASAMI GOUNDAN.**

CRIMINAL PROCEDURE CODE, ACT V of 1898, ss 307, 310.—*Accused cannot be asked to plead to prior convictions when case referred to High Court under s. 307, before the High Court convicts on such reference.* Sections 307 and 310 of the Code of Criminal Procedure clearly provide that an accused is not to be asked to plead to prior convictions until he has been convicted on the charge under trial. Where a Court of Sessions makes a reference to the High Court under section 307 of the Code of Criminal Procedure there being no conviction or acquittal in the Sessions Court and it is only after conviction by the High Court that the accused can be asked to plead to prior convictions.

[30 Mad., page 136].

(D.) **VALIA AMBU PODUVAL v. EMPEROR.**

CRIMINAL PROCEDURE CODE, ss. 408, 435.—*Jurisdiction.*—*Appeal from first-class Magistrate lies to the Sessions Court, within whose jurisdiction the Court of the Magistrate ordinarily sits.*—*'Situat' meaning of.* The Court of Session to which appeals lie from Magistrates of the First Class under section 408 of the Code of Criminal Procedure in the Court of Sessions within the local limits of whose jurisdiction the Court of such Magistrate ordinarily sits, whether the offence be committed within such local limits or not. The word 'situate' in section 435 of the Code of Criminal Procedure refers to the place where the inferior Courts mentioned therein ordinarily sit. The principle laid down in section 435 in regard to revisional powers, must, in the absence of any indication to the contrary in the Code, be followed in the case of appeals under section 408.

[30 Mad., page 179].

(E.) **EMPEROR v. SAMUEL.**

PENAL CODE—ACT XLV of 1860, s 312.—*Officer arresting and confining judgment-debtor in house of judgment-creditor not guilty of wrongful confinement.* An officer arresting a judgment-debtor, under a warrant which directs him to produce the

judgment-debtor then arrested before the Court with all convenient speed, is not guilty of wrongful confinement if, having effected the arrest when the Court is not sitting, he confines him in the house of the judgment-creditor. His duty is to produce the judgment-debtor at the next sitting of the Court and until he so produce him, he is responsible for his safe custody.

(30 Mad., page 182).

(A.) DORASAMI NAIDU v.
EMPEROR.

CRIMINAL PROCEDURE CODE—ACT V OF 1898, s. 106 (3)—*Order of security can not be made by appellate Court when original conviction not by one of the Courts specified in the section.* An order for security cannot be made under section 106 (3) of the Code of Criminal Procedure by a Court of Appeal or Revision which is one of the Courts specified in the section, when confirming the original conviction of a Court which is not one of those specified therein. *Muthia Chetty v. Emperor* (I. L. R., 29 Mad., 190), referred to and doubted.

[28 Bom. page 346.]

[B.] EMPEROR v. MAGANLAI.

BOMBAY SALT ACT [BOMBAY ACT II OF 1890]—*Salt—Removal of Salt—Intention—Knowledge—Ingredients of the offence.* To support a conviction under section 47 [a] of the Bombay Salt Act [Bombay Act II of 1890] it is not necessary to prove dishonest intention on the part of the accused; since the wording of the clause does not in express terms or by necessary implication make intention or knowledge an essential ingredient of the offence. What is prohibited by the Act is the removal of salt in contravention of any license or permit and that shows that such removal is prohibited in itself.

[28 Bom. page 412.]

[C.] EMPEROR v. KONDIBA.

JURY—CRIMINAL PROCEDURE CODE Act V of 1898 [SECS. 303, 304—*Judge—Misunderstanding—the law—Verdict mistaken or ambiguous—Powers of the Judge to question the jury.*] Section 304 of the Criminal Procedure Code [Act V of 1898] obviously contemplates cases

where the verdict delivered is not in accordance with what was really intended by the jury. It has no application where there is no accident or mistake in the delivery of the verdict; and the mistake lies in the misunderstanding of the law by the jury. If such a mistake results in an erroneous verdict, it can be corrected only by the Judge disagreeing with the jury and referring the case under section 307 of the Code to the High Court.

Per Curiam:—"There is no provision in the Code of Criminal Procedure [Act V of 1898] which empowers the Judge to question the jury as to their reasons for a unanimous verdict when there is nothing ambiguous in the verdict itself, and no lurking uncertainty in the minds of the jury themselves regarding it. Section 303 of the Code limits the power of the Judge to question to cases in which it is necessary to ascertain what the verdict of the jury is—that is, where the verdict being delivered in ambiguous terms or with uncertain sound their meaning is not clear."

[28 Bom. page 479]

[D.] SEE PERJURY.

CRIMINAL PROCEDURE CODE (ACT V OF 1898), SECS. 435, 439—*Intentionally giving false evidence in a judicial proceeding—Absence of discussion of evidence for the defence—Explaining away the statement of the accused to his prejudice—Assignment of perjury—Proof—Misreading of documentary evidence—Fundamental errors in principle—Revisional jurisdiction—Indian Penal Code Act XLV of 1860, sec. 193.*

(28 Bom. page 533).

(E.) EMPEROR v. BANKATRAM
LACHIRAH.

FALSE EVIDENCE—*Indian Penal Code (Act XLV of 1860) sec. 193—Criminal Procedure Code (Act V of 1898) sec. 435, 439—Perjury—Contradictory statement—Power of the High Court to interfere in revisional jurisdiction.* Where the accused was convicted and sentenced under section 193 of the Indian Penal Code (Act XLV of 1860) of giving false evidence in a judicial proceeding and where the

charge was based on the allegation that in two depositions, one given on the 3rd December, 1896, and the other on the 23rd March, 1901, the accused had made two contradictory statements, and the case for the prosecution was that on that ground, though it could not be proved which of the alleged contradictory statements was false, the accused's conviction should be upheld.

Held, (by *Jenkins, C. J.*, reversing the conviction and setting aside the sentence in revisional jurisdiction,) that to convict an accused of giving false evidence, it is necessary to show not only that he has made a statement which is false, but that he also either knew or believed it to be false or did not believe it to be true.

Where it is sought to establish guilt solely on contradictory statements, although the Court "may believe that on the one of the other occasion the prisoner swore what was not true, it is not a necessary consequence that he committed perjury; for there are cases in which a person might very honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and from other circumstances at a subsequent time be convinced that he was wrong and swear to the reverse without meaning to swear falsely either time."

Where the conviction is based on merely the statements contained in the charge without examining the whole of the depositions, the conviction is an error of law.

Where the conviction of the accused for perjury in such a case was sustained by additional evidence, namely, the statements, of the brother of the accused not made on oath at the trial of the case.

Held, that the statements were inadmissible and, if relied on, would vitiate the judgment.

The admission in evidence of a statement made by the accused having no real bearing on the case but showing only at the most that the accused in other matters had been untruthful, would be highly improper.

The controlling power of the High Court "is a discretionary power, and it must be exercised with regard to all the circum-

stances of each particular case, anxious attention being given to the said circumstances which vary greatly. This discretion ought not to be crystallized, as it would become in course of time, by one Judge attempting "to prescribe definite rules with a view to bind other Judges in the exercise of the discretion which the Legislature has committed to them. This discretion, like all other judicial discretions, ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case."

Per Chandavarkar, J.:—In the case of perjury arising out of contradictory statements the Court dealing with them should not convict unless fully satisfied that the statements are from every point of view irreconcilable, and if the contradiction consists in two statements opposed to each other as to matters of inference or opinion on which a man may take one view at one time and a contrary view at another, there can be no perjury, unless on oath he has stated facts on which his first statement was based and then denied those facts on oath on a subsequent occasion.

Where the sole and whole question is—are the statements forming the subject of the charge so contrary that one or the other of them must be necessarily false?—the answer to that question depends upon the construction to be put upon the two depositions from which the statements are taken and their construction, as indeed the construction of any document, is a question of law, not of fact.

The law as laid down in the Criminal Procedure Code (Act V of 1898) gives the High Court no power to go into evidence in revision. The Bombay High Court has, as a matter of practice, held that it will not go into evidence as a rule, but will interfere only under special circumstances, or where there is an error of law.

The accused in a criminal case is merely on the defensive and, unless there is any positive admission of a fact by him, any omission on his part to explain what indeed can be explained without his explanation should not be pressed against him.

Per Atten, J. (contra):—The rule of practice is that the High Court ordinarily refrains from opening questions of fact, when no appeal lies, except on some ground of law and in order to remedy a clear miscarriage of justice.

Where the question before High Court exercising its powers of revision under section 439 of the Criminal Procedure Code (Act V of 1898) is one of appreciation of evidence, the rule of practice adopted is to refuse to disturb a conviction when there is legal evidence, oral or documentary, to sustain it.

"Under the law of British India, it is not necessary that the charge should allege which of two contradictory statements upon oath is false, but it is sufficient (unless indeed some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon oath at one time and directly contradictory statement at another." It is not the duty of the Court of first instance (and far less of a Court of appeal or revision) to supply *ab extra* an explanation which the accused himself has not suggested or an intention or knowledge which the accused has not claimed.

[29 Bom. page 35.]

(A.) **EMPEROR v. NADIRSHA.**

MUNICIPALITY—*City of Bombay Municipal Act (Bom. Act III of 1888), sections 231 and 471—Municipal Commissioner—Notice to construct drains—Effect of Negotiations—Limitation*. Accused was convicted and fined Rs. 25 for not complying with a notice issued by the Municipal Commissioner of Bombay under section 231 of Bombay Act III of 1888. The notice required him to make an open drain in the gully on the west of his premises, this drain to be so constructed as to adjoin the west wall of his building.

Held, (reversing the conviction and sentence), that the notice was *ultra vires* inasmuch as it required the accused to construct a drain adjoining a particular part of his premises.

Held, that on a notice being served by

the Municipal Commissioner of Bombay, under section 231 of Bombay Act III of 1888, if negotiations ensue, which are tantamount to a request by the party, served with the notice, and a consent by the Commissioner, to reconsider the matter, such negotiations will have the effect of waiving the notice, and it is competent to the Commissioner to issue a fresh notice after the negotiations have closed. Limitation, in this event under section 514 of the Municipal Act, will not run from the original notice.

[29 Bom. page 193].

[B.] **EMPEROR v. WALLACE
FLOUR MILI COMPANY.**

BOMBAY MUNICIPAL ACT [III OF 1888], SEC. 394.—*Storing of oil,—what amounts to "storing."* The wording of section 394 of the City of Bombay Municipal Act requires that the premises, in order to attract the operation of the section, should be used for the purpose of storing. The phrase "for the purpose" indicates that it must be the intention of those using the premises to store; that storing must be the object aimed at;—the final cause for which the premises are used. There is nothing in the exemption which sub-section 3 declares in favour of the mills specified to imply that sub-section 1 was intended in the case of premises not so exempted, to include any use to which they might be put which was merely incidental or subsidiary to the paramount purpose to which the premises are devoted.

[29 Bom. page 226].

(C.) **EMPEROR v. WALIA MUSAJI.**
GAMBLING—*Gambling Act (Bombay Act of 1887), sections 4, 5, 7—Common gaming house.—Jamátkhána of the Borah community.* The accused were found playing for money with cards in a building ordinarily used as a *Jamátkhána*, but accessible to such members of the Borah community as have no place to live in and are too poor to afford the rent of a room. This place was frequented by the petitioners and others and instruments of gaming were found there when the accused were arrested. The Magistrate convicted the accused of offences under sections 4 and 5 of

the Bombay Prevention of Gambling Act (Bombay Act IV of 1887 ;

Held, that it was open to the Magistrate to rely on the presumption which under section 7 of the Act might be drawn that this place was used as a common gaming house unless the contrary was made to appear by the evidence before him : there was, therefore, no ground to interfere in revision with the convictions under section 5 of the Act.

Held, further, that no presumption arose under section 7 of the Act that the place was "kept" by any person as a common gaming house : the conviction under section 4 was therefore wrong.

In order to constitute an offence under section 4 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), of keeping a common gaming house, it is necessary to show, in the first place, that the person charged with that offence is the owner, or occupier or a person "having the use" of the place alleged to be kept as a common gaming house. It is not sufficient to show that the accused used the place in question for the purpose of gaming there.

[29 Bom. page 264].

(A.) **EMPEROR v. LAKHAMSI.**

GAMBLING—*Bombay prevention of Gambling Act (Bombay Act IV of 1887), secs. 3, 4 (a)—Instrument of gaming—Single page of paper used for registering wagers.* The expression "instruments of gaming" as defined in section 3 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) includes a single page of paper used for registering wagers.

[29 Bom. page 386].

(B.) **EMPEROR v. JUSUB ALLY.**

GAMBLING—*Bombay Prevention of Gambling Act (Bom. Act IV of 1887), sections 3, 4, 12—Gambling in a machhwa—Public place—Bombay Harbour.* The accused, fourteen in number, chartered, a machhwa (boat), and, having got it anchored in the Bombay Harbour a mile away from the land, carried on gambling there. For this they were convicted of an offence under section 12 of the Bombay

Prevention of Gambling Act (Bom. Act IV of 1887) for gaming in a public place.

Held, that the accused were not guilty of an offence under section 12 of the Act, since they cannot be said to be gambling in a public place.

Per Batty, J.—The word "place" which is patient of many different meanings, must necessarily in each instance in which it is used by the Legislature, be construed with reference to the intention to be inferred from the context. Thus in section 12 of the Bombay Prevention of Gambling Act [Bom. Act IV of 1887] or in sections 3 of 36 and 37 Vict., c. 38, in connection with such words as roads, streets and thoroughfares, it has a very different meaning from that which it bears in section 4 of the Act and from that given to it in connection with section 3 of 16 and 17 Vict., c. 119, by judicial decisions.

The mischief aimed at in section 4 of the Act is a mischief clearly distinct from that aimed at in section 12 of the Act. In the former the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection known as a place where gambling is to be carried on, and making a livelihood by attracting people to a place which they would not otherwise frequent. In the latter, the offence is not that the individual members are making a profit at all but simply that they are carrying on their gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed—if his inclinations lie that way—to join in or follow the bad example openly placed in his way. In the one case comparative privacy for profit, in the other the bad public example and accessibility to the public, would seem to constitute the gravamen of the offence.

Section 12 of the Bombay Prevention of Gambling Act (Bom. Act IV of 1887) aims at gambling in a public place or thoroughfare ordinarily with no interfering obstruction to the public view, where there is voluntary publicity.

[29 Bom. page 423.]

(C.) **EMPEROR v. RAMPRATAP.**
Factories Act (XV of 1881), section 14,

15 (1) (e)—*Fencing Machinery—Manager—Occupier—Liability.* The accused who was the manager of a ginning factory at Dhulia resided in a part of the premises on which the factory stood. He was charged under section 15 (I) (e) of the Indian Factories Act (XV of 1881) with having neglected to fence certain machinery in the factory; and he was convicted and sentenced by the Magistrate. On appeal, the Sessions Judge reversed the conviction and sentence and acquitted the accused. On appeal by the Government of Bombay against this order of acquittal:

Held, that the accused was not liable to conviction under section 12 (1) (e) of the Indian Factories Act (XV of 1881), since the manager of a factory cannot be said with truth to have been the occupier thereof.

[29 Bom. page 449].

[A]. EMPEROR v. JETHALAL.

CRIMINAL PROCEDURE CODE (Act V of 1898), SECS 233, 239—*Joint trial of different accused—Receiving stolen property at different times and from different persons—Same transaction—Indian Penal Code [Act XLV of 1860], sec. 411.* A theft was committed of certain property including ornaments. S was one of the persons who received the stolen property from the thieves. S disposed of the property to several persons, and being indebted to J he gave a portion of the property to J in satisfaction of his debt. K was found to have in his possession a portion of the property identified as stolen in the same theft, but there was nothing to show when he received it and from whom. Under these circumstances the three persons S, J and K were tried together at one trial on charges of receiving stolen property knowing it to be stolen.

Held by Russel and Batty, J J., that the three offences against the three accused S, J and K were distinct offences which could not be regarded as offences committed in the same transaction within the meaning of section 239 of the Criminal Procedure Code, and that the trial of the three accused together was

in contravention of the provisions of section 233 of the Code and was therefore illegal.

Per BATTY, J. :—"The offence punishable under section 414 of the Indian Penal Code is that of voluntarily assisting in disposing of stolen property and therefore must necessarily form part of the same transaction as the receipt by the person to whom it is so disposed of. It necessarily involves manifest criminality in both persons at one and the same time when both offences are committed."

"The words of section 239 of (the Criminal Procedure, 1898), are, to say the least of it, ambiguous, if intended to include in the same transaction a series of acts one or more of which had been done at a time before the parties to the subsequent acts had anything to do with that transaction. The illustrations to the section seem to suggest that the persons to be jointly tried must have been associated from the first in the series of acts which form the same transaction."

"The inevitable result appears to be that the proceedings of the Magistrate were illegal and a nullity . . . There has been no legal trial. There has therefore been no legal acquittal and there is therefore neither appeal against acquittal nor acquittal to reverse, and the question whether the accused should now be legally tried is a question not for judicial decision but for the consideration of the authorities with whom it rests to proceed with a prosecution."

Subrahmanya Ayyar v. King-Emperor [1901] 25 Mad., 61. followed.

[29 Bom., page 575].

[B]. EMPEROR v. ROBERT COMLEY.

ADEN COURTS ACT (II OF 1864), SECS. 17, 20, 22, 23—*Criminal Procedure Code (Act V of 1898) secs. 447, 449—Resident's Court at Aden—Sessions Court—Transfer of case to the High Court—Jurisdiction of the High Court to transfer a case to itself from the Court of the Resident at Aden—Letters Patent, clause 29*. It is competent to the Resident at Aden, to whose Court as a Court of

Session a case is committed under section 447 of the Criminal Procedure Code, 1898, to transfer the case to the High Court, under the provisions of section 449 of the Code, on the ground that the offence cannot be adequately punished by him.

The powers of the Court of Session conferred upon the Resident at Aden by the Aden Courts [II of 1863], are not merely such as are defined in the Criminal Procedure Code, 1898; but such as are provided expressly in the Act itself. And section 449 of the Code of Criminal Procedure, 1898, cannot affect those provisions.

The High Court of Bombay can, under clause 29 of the Amended Letters Patent, transfer to itself a case pending in the Court of Session at Aden.

[30 Bom. page 49].

[A.] EMPEROR v. DATTO.

CRIMINAL PROCEDURE CODE (ACT V OF 1898), SECS. 222, 239—*Successive breaches of trust—Joinder of charges—Joint trial—Same transaction—'Transaction' meanings of.* Where the accused persons were jointly in charge of trust funds, so that one could not act without the connivance of the other, and each of them misappropriated sums of money from the trust funds to his own use, thus evidently carrying through their object in concert, the fact that they carried out their scheme by successive acts done at intervals, alternately taking the benefits, did not prevent the unity of the project from the constituting the series of acts one transaction, i. e. the carrying through of the same object which both had from the first act to the last: and there was no objection to their being tried jointly at one trial.

Section 222 of the Criminal Procedure Code (Act V of 1898) clearly admits of the trial of any number of acts of breach of trust committed within the year as amounting only to one offence. The section does not require any particular formulation of the accusation, but only enacts that it is sufficient to show the aggregate offence without specifying the details. It dispenses with the necessity

of amplification: it does not prohibit enumeration of the particular items in the charge.

Section 239 of the Criminal Procedure Code (Act V of 1898) admits of the joint trial when more persons than one are accused of different offences committed in the same transaction. It suffices for the purpose of justifying a joint trial that the accusation alleges the offences committed by each accused to have been committed in the same transaction, within the meaning of section 239. It is not necessary that the charge should contain the statement as to the transaction being one and the same. It is the tenour of the accusation and not the wording of the charge that must be considered as the test.

In section 239 of the Code, a series of acts separated by intervals of time are not excluded, provided that those jointly tried have throughout been directed to one and the same objective. If the accused started together for the same goal, this suffices to justify the joint trial, even if incidentally, one of those jointly tried has done an act for which the other may not be responsible.

The foundation for the procedure in section 239 is the association of two persons concurring from start to finish to attain the same end. No doubt if it were attempted to associate in the trial a person who had no connection whatever with the transaction at a time when one or more of the series of the acts alleged have been done then that would be outside the provisions of the section.

"Transaction" means "carrying through" and suggests not necessarily proximity in time—so much as continuity of action and purpose.

[30 Bom. page 126].

[B]. EMPEROR v. BUDHOBAI.

BOMBAY MUNICIPAL ACT, OF CITY OF (BOM. ACT III OF 1888), SECS. 410, 24, SCH. D. [4] *Prohibition of sale of fish except in a market—Sale from a basket placed on the Chowpatti foreshore—Sale from a vessel—Private market—Onus of proof—City of Bombay—limits of—Bombay General Clauses Act (Bom. Act I of 1904), sec. 3 [14].* The accused, a fisher woman, was

charged under section 410 [1] of the Bombay City Municipal Act [Bom. Act III of 1888], with selling or exposing for sale, without license from the Municipal Commissioner, fish intended for human food, on the Chowpatti foreshore, in the City of Bombay. The sale was from a basket, which the accused had placed on the sand, at some distance from the water, between the high and low water mark. The fish sold was fresh fish and was brought from one of the boats then in Back Bay. The Presidency Magistrate acquitted the accused on the grounds that [1] the Bombay City Municipal Act did not apply as the place of sale was outside the limits of the City of Bombay as laid down in the City of Bombay Municipal Act; [2] section 410 of the Act had no application because the place was a private market established from time immemorial; and [3] the sale fell within section 410 [2] of the Act. On appeal, against this order of acquittal, by the Government of Bombay:—

Held, reversing the order of acquittal and convicting the accused, that the accused was not protected by section 410 [2] of the Bombay City Municipal Act [Bom. Act III of 1888], since it was impossible in the present case to say that the fish had been sold from a vessel, when as a matter of fact it had been sold from the basket on the shore, it having been brought from the vessel which was in the water.

Held, also, that the onus of proving that the place in question was a "private market" lay upon the accused.

Held, further, that the Bombay City Municipal Act (Bom. Act III of 1888) applied to the spot in question, because it came within the expression "City of Bombay" as defined by the Bombay General Clauses Act (Bom. Act I of 1904).

[30 Bom. page 348].

(A). EMPEROR v. HUSSEIN.

GAMBLING—*Bombay prevention of Gambling Act (Bom. Act IV of 1887), sec. 12*—*Gambling in a railway carriage—Through special train—Public place—Railway track—Public having no right of access except passengers.* The accused were convicted under section 12 of the Bombay Prevention of Gambling Act (Bom. Act IV of

1887) as persons found playing for money in a railway carriage forming part of a through special train running between Poona and Bombay, while the train stopped for engine purposes only at the reversing Station (on the Bore Ghauts between Karjat and Khandala Stations) of the Great Indian Peninsula Railway.

Held, reversing the conviction, that a railway carriage forming part of a through special train is not a public place under section 12 of the Bombay Prevention of Gambling Act [Bom. Act IV of 1887]

Per Jenkins C. J.:—The word "place" [in section 12 of the Bombay Prevention of Gambling Act [Bom. Act IV of 1887] is, I think, qualified by the word "public" and having regard to its context and its position in that context, it must, in my opinion, mean a place of the same general character as a road or thoroughfare..... I am unable to regard the railway carriage in which the accused were, as possessing such characteristics of, bearing such a general resemblance to, a street or thoroughfare as to justify us in holding that it was a public place within the meaning of section 12 of the Act, with which alone we are concerned.

Per Russell, J.—The adjective "public" (in section 12 of the Bombay Prevention of Gambling Act (Bom. Act IV of 1887) applies to all the three nouns—street, place or thoroughfare, and it is clear that the railway line certainly cannot be described as a "public street or thoroughfare" inasmuch as it is not and cannot be used by the public in the same way as they are in the habit of using "public streets" and "thoroughfare".

[30 Bom. page 392].

[B]. EMPEROR v. DWARKADAS.

BOMBAY MUNICIPAL ACT (Bom Act III of 1888), sec 249—*Place of public resort—Theatre.* A theatre is a place of public resort and as such falls within the purview of section 249 of the City of Bombay Municipal Act [Bom. Act III of 1888].

[30 Bom. page 421].

[C]. EMPEROR v. BHASKAR.

CRIMINAL PROCEDURE CODE [ACT V OF 1898], sec. 292—*Act X of 1882, sec. 289*

292—*Adducing evidence—Documents put in during cross-examination by the accused of witnesses for the Crown—Right of reply.*] During the cross-examination of a witness for the Crown certain documents were put in evidence by Counsel for the accused which were not part of the record sent up to the Court by the committing Magistrate. No witnesses were called for the defence. The crown claimed the right of reply.

Held, that as the documents put in during the cross-examination of a witness for the Crown were tendered and relied upon by the defence as distinct from the evidence actually tendered by the prosecution and submitted for cross-examination they must be regarded as evidence adduced by the accused, and that therefore the Crown had the right of reply.

(30 Bom. page 558).

(A.) MUNICIPAL COMMISSIONER
OF BOMBAY v. MATHURABAI.

BOMBAY MUNICIPAL ACT [BOM. ACT III OF 1888], SEC. 3, CLS. [w], [x] AND [y] SEC. 461—*Building bye-laws Nos. 40, 42—Street—Construction.*] The owner of a large plot of ground abutting on a highway divided the plot into 19 small plots and sold them to different purchasers. These plots were mapped out as abutting on the sides of two parallel roads which were marked out as proposed roads. Each of the purchasers of the plots entered into covenant with the owner to keep open that portion of the proposed road which stood in front of his plot and to prepare so much of the road. The question arose whether the proposed road was a street within the meaning of the City of Bombay Municipal Act [Bom. Act III of 1888]:

Held that the proposed road would constitute a street within the meaning of the City of Bombay Municipal Act [Bombay Act III of 1888].

[30 Bom. page 611]

(B.) EMPEROR v. KOTHIA.

CRIMINAL PROCEDURE CODE ACT V OF 1898), SECS. 337, 338—*Accomplice—Pardon—Grant of conditional pardon—*

The pardoned accomplice giving full and true story of the crime, but retracting it in cross-examination before the Sessions Court—Order of Sessions Court to committing Magistrate to withdraw the pardon—Forfeiture of pardon—Trial of accused for the offence—Commitment—Conviction on his plea of guilty—Irregularity—Illegality—Practice and Procedure.) The accused was one of several persons accused of murder. He accepted a tender of pardon made to him by the Committing Magistrate on the conditions set out in section 337 of the Criminal Procedure Code. He was examined as a witness for the Crown before the Committing Magistrate, and he made a full and true disclosure of the whole of the circumstances within his knowledge relating to such offence. He repeated them in his examination-in-chief before the Sessions Judge, but resiled from his statements in cross-examination. At the conclusion of the trial, in which the accomplices were convicted of Murder, the Sessions Judge sent the pardoned accomplice in custody to the Committing Magistrate with an order directing that he should be committed for trial for the same murder. The Magistrate accordingly withdrew the pardon and committed the accused to the Sessions Court to take his trial for the murder aforesaid. The Sessions Judge convicted the accused of murder on what was described as his plea of guilty and was sentenced to transportation for life. On appeal.

Held, by Aston, J., that the Sessions Judge had no authority under the Code of Criminal Procedure to order the accused to be committed for trial for the murder in respect of which a pardon had been tendered; and, further, that the accused's trial was conducted with material irregularity which seriously prejudiced the accused and occasioned a failure of Justice.

Held, by Beaman, J., that the Sessions Judge, who presided at the first trial had no power to make the order purporting to have been under section 339 of the Criminal Procedure Code, directing the commitment of the accused on the ground that he had forfeited his pardon; and that the procedure adopted was both wrong and illegal.

Per Aston, J.—It is open to a pardoned accomplice, if placed on trial as an accom-

pliee who has forfeited the pardon already accepted by him, to plead in bar of trial that he did comply with the condition on which the tender of pardon was made, and such plea in bar of trial would have to be gone into and decided before the accused is called on to enter his plea in defence to the charge of having committed the offence in respect of which the pardon was tendered,

Section 339 of the Criminal Procedure Code does not enact that a person who has accepted a tender of pardon, renders himself liable to be tried for the offence in respect of which pardon was tendered, if he gives false evidence; what the section says is that he renders himself so liable [or forfeits the pardon] if by giving false evidence he has not complied with the condition on which the tender was made.

Per Beaman J.—At the termination of the trial in which the pardon was given, the accomplice must be discharged by the Court. Then if so advised, the Crown may re-arrest and proceed against him for the offence in respect of which he was given a conditional pardon. When put upon his trial for that offence he may plead to competent Court his pardon, in bar. And that is a plea that the Court would be bound to hear and decide upon before going further and putting him on his defence. In deciding it the Court would have to rise the issues whether he had or had not complied with the conditions of the pardon, whether he had or had not made a full and true disclosure of the whole facts. And where after having admittedly done that he had at a later stage recanted, that recantation amounted to giving false evidence within the meaning of section 339 of the Criminal Procedure Code, and worked a forfeiture of the pardon.

[31 Bom., page 204].

(A). **EMPEROR v. RAMCHANDRA.**

PENAL CODE (ACT XLV OF 1860), SECS. 182, 211—False information—False charge—Distinction between the two offences. The accused sent a telegram to the Collector of Ratnagiri, in his capacity of the head of the Municipality at Vengurla to the effect that: "Hlad

Master, English School (Vengurlar, misappropriated Rs. 168 of fees since October. Please investigate yourself soon." For this, the accused was convicted under section 182 of the Indian Penal Code (Act XLV of 1860), on the grounds that he had no probable cause for making the assertion contained in the telegram, and that he probably knew that a peon had confessed that he was guilty of the misappropriation.

Held, that on these facts the charge under section 182 of the Code could not be legally sustained.

The offence made punishable by section 182 of the Indian Penal Code is a distinct offence from that described in section 211 of the Code, which relates to an attempt to put the Criminal Courts in motion against another person. The action which section 211 renders penal is action entailing very serious consequences, and therefore the more serious consideration is required on the part of the individual who takes it. It is sufficient in such cases for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this. But something more is required in the case of action referred to in section 182. To bring a case within that section, it is necessary for the prosecution to prove, not merely absence of reasonable or probable cause for giving the information, but a positive knowledge or belief of the falsity of the information given.

[31 Bom. page 218].

(B). **EMPEROR. v. ISAP MAHOMED.**

PENAL CODE (ACT XLV OF 1860), SECS. 363, 366, 498—Criminal Procedure Code (Act I of 1898), secs. 227, 228, 199, 233, 537—Charge—Addition of a charge—Irregularity—Penal Code (Act XLV of 1860), secs. 363, 366, 498. The accused was tried on charges under sections 363 (kidnapping from lawful guardianship) and 366 (kidnapping a woman) of the Indian Penal Code (Act XLV of 1860). At the conclusion of the evidence to establish those charges and after the evi-

dence for the defence had been recorded, the Court added a charge under section 498 (enticing a married woman) of the Code, notwithstanding the objection by the accused's counsel. The trial ended in conviction of the accused on all the three charges. The accused appealed contending that the procedure adopted was contrary to the provisions of section 199 of the Criminal Procedure Code and to the spirit of section 238 of the Code :—

Held, (1) that the procedure adopted in the case was not regular. The additional charge framed at the stage it was framed, notwithstanding the objection by the accused's counsel, was prejudicial to the accused ;

(2) that the conviction under section 498 of the Indian Penal Code should be set aside : and further investigation be made into the remaining charges.

[31 Cal. page 542].

(A). HARI SINGH v. JADU
NANDAN SINGH

GAMBLING—*Sham horse-racing machine—Instrument of gaming—Compound of house—Public place—Gambling Act (Bengal Act II of 1867)*. The accused played a game of sham horse-racing known as "little horses" by means of a machine. Which horse won was a pure matter of chance. The public staked their money on any of the horses before the machine was started. The accused appropriated all the stakes, returning four times their stakes to those who had staked their money on the winning horse. The game was played in the compound of the Sanjoy Press consisting of an open space of land without any fence situated one cubit from the bazar. There was no evidence that the owner ever gave or refused permission to any one to come on his compound or that any one asked his permission to do so or that any one was prevented doing so by him. *Held*, the accused was rightly convicted under s. 11 of the Bengal Gambling Act, II of 1867. The difference between gaming and betting discussed. *The Queen v. Wellard*, L. R. 14 Q.B.D. 63 ; *Turnbull v. Appleton* 45, J. P. 469 ; *Queen-Empress v. Sri Lal* I. L. R. 17 All. 166 ; *Khudi Sheikh v. The*

King-Empress 6 C. W. N. 33 ; *Queen-Empress v. Narottamdas Motiram* I. L. R. 18 Bom. 681 referred to.

[31 Cal. page 557].

[B]. **EMPEROR v. MADHO DHOBI**.
ARREST—*Arrest by police in Calcutta—Legality—Security for good behaviour—Information—Duty of Magistrate to proceed with case—Criminal Procedure Code Act V of 1898* s. 1(2)(a), s. 4 (p)(a), s. (56) b, s. 109 [b]. The accused was arrested in Calcutta by the Inspector in charge of the Colootollah thana under the provisions of s. 55 [b] of the Criminal Procedure Code and placed on his trial before a Bench of Honorary Magistrates on a charge under s. 109 [b] of the Code. The Magistrates discharged the accused on the ground that he was not properly before them, as the Inspector had no authority of arrest him. *Held*, that the order of discharge should be set aside and the case be proceeded with against the accused. That the arrest of the accused by the Inspector was quite legal. That the Magistrates were also empowered to put in force the provisions of s. 109 of the Code, whenever they had credible information that the accused had no ostensible means of livelihood or was unable to give a satisfactory account of himself and was within the limits of their jurisdiction. How he came before them was immaterial. *Emperor v. Ravalu Kesigadu* I. L. R. 26 Mad. 124, followed.

(31 Cal. page 664).

(C). **EMPEROR v. ARJAN PHAMANIK**.
SANCTION—*Complaint—Assault—Public servant, resistance to authority of—Criminal Procedure Code (Act V of 1898), ss. 195, 476—Indian Penal Code (Act XLV of 1860), ss. 183, 352*. A Munsiff of Purnea held an inquiry under s. 476 of the Criminal Procedure Code, and having come to the conclusion that the accused had committed various offences under the Penal Code in connection with certain execution proceedings in his Court sent the case for trial to the District Magistrate, who in turn transferred the case to a Deputy Magistrate for disposal. The accused were tried under ss. 183 and 352 of the Penal Code. The Deputy Magistrate, without considering the circumstances

merits, acquitted the accused on the ground that there was no sanction as required by law for the prosecution of the accused. On appeal by the Local Government against the acquittal—*Held* with regard to the charge under s. 183 of the Penal Code that, as the Munsiff had acted under s. 476 of the Criminal Procedure Code, it was incumbent on the Deputy Magistrate under cl. [2] of that section to proceed with the case according to law. *Held* also that the charge under s. 352 of the Penal Code required no sanction. *Ishri Prasad v. Sham Lal*, I. L. R. 7 All. 871 referred to.

[31 Cal. page 685].

[A.] MANMATHA NATH MITTER
v. BARODA PRASAD ROY
CHOWDHRY.

JURISDICTION—*Refusal to examine witnesses—Interference by High Court—Criminal Procedure Code (Act V of 1898) s. 145.* Where in a proceeding under s. 145 of the Criminal Procedure Code the trying Magistrate refused to examine certain witnesses on behalf of one of the parties, who were present in Court—*Held* that the trying Magistrate had acted in contravention of the provisions of s. 145, cl. (4) of the Code and the High Court had power to interfere.

[31 Cal. page 710]

[B.] EMPEROR v. LUCHMUN
SINGH.

EXTORTION—Confinement—Abetment—Evidence—Appeal Court—Majoinder—Indian Penal Code (Act XLV of 1860) s. 347—Criminal Procedure Code (Act V of 1898) s. 428. A Head constable in charge of a police outpost agreed to drop proceedings against K. who had been arrested on a certain charge on condition that K. paid to him a sum of money. The Head constable sent away K in charge of two chowkidars to procure the money. In order to effect this object the chowkidars subsequently confined K at various places and maltreated him. *Held*, that it would be impossible to hold the Head

constable guilty of abetting an offence under s. 347 of the Penal Code in the absence of proof that he gave definite orders to that end. Where in an appeal a Sessions Judge is of opinion that the evidence of witnesses, who where not examined in the lower Court, is necessary, he should proceed under s. 428 of the Criminal Procedure Code. Where in showing cause against a Rule obtained by a petitioner, an objection as to misjoinder, which formed no portion of the Rule, was taken by the Crown for the first time, the High Court declined to give effect to it.

[31 Cal. page 715].

[C.] JOHARUDDIN SARKAR v.
EMPEROR.

TRANSFER—Adjournment of case—Supplementary case, disqualification of Sessions Judge to try—Criminal Procedure Code (Act V of 1898) s. 526 cl. (8). The accused were committed for trial on the 12th December, 1903. Trial was fixed for the 3rd February 1904 before the Sessions Judge. On the 3rd February the accused asked the Judge to refer the case to the High Court for transfer on the ground that the Judge had previously convicted other accused persons on the same facts. This was refused. The accused thereupon applied under s. 526 cl. (8) of the Criminal Procedure Code for an adjournment of the case, on the ground that the High Court would be moved for a transfer. This was also refused. The case proceeded and after the case for the prosecution was concluded, two witnesses were examined on behalf of one of the accused and the case was adjourned till the 16th February. Between the 3rd and 16th February no application was made to the High Court for a transfer. The case was concluded on the 16th February and the accused were convicted. *Held* that the Sessions Judge was not disqualified from trying the case. That the accused had a reasonable time for applying to the High Court before they were required to enter upon their defence on the 16th February and, as they abstained from doing so, the proceedings of the Sessions Judge were not void.

[31 Cal. page 811].

[A.] JHALAN JHA v. BUCAR
GOPE.

SANCTION—*Sanction to prosecute, power of Appellate Court to grant—Rule on District Magistrate to show cause—Right of opposite party to be heard—Criminal Procedure Code (Act I of 1898) ss. 195, 439.* The power of granting sanction by an Appellate Court ought to be exercised carefully, especially when sanction is refused by the Court of first instance. Where sanction had been granted by the Sessions Judge to prosecute the petitioner for the purposes of public justice, and a Rule had been issued by the High Court upon the District Magistrate only to show cause why the sanction should not be set aside, it was held at the hearing of the Rule that the opposite side had no *locus standi* and should not be heard.

[31 Cal. page 858.]

(B.) DWARKA NATH RAI CHOW-
DHARY v. EMPEROR.

CRIMINAL PROCEEDINGS STAY OF, PENDING CIVIL SUIT. Upon an application in revision to stay criminal proceedings pending in a Magistrate's Court until the disposal of a civil suit in regard to the same subject matter. *Held* that the High Court ought not to interfere except on good cause shown. That as this was not a private prosecution, but one directed by the District Judge in what he believed to be the interests of justice and as the witnesses were related to the accused, it was desirable that the evidence should be recorded without delay and that the Magistrate should proceed forthwith to make the preliminary inquiry prior to commitment.

[31 Cal. page 910].

[C.] DURGA PRASAD KALWAR v.
EMPEROR.

GAMBLING—*Public place—Osara or verandah—Gambling Act, II Bengal Act of 1867, s. 11.* The accused were convicted under s. 11 of the Gambling Act, II (B. C.) of 1867, of gambling in a public place.

The place where the gambling was held was an *osara* or verandah, which was enclosed on all sides, but having door opening towards the road and having a platform between the *osara* and the road. It was a part of a building, which was the private property of certain individuals, and was used during the day as a shop; but not so in the night. The gambling in question took place after midnight. *Held* setting aside the convictions, that the *osara* was not a public place within the meaning of s. 11 of the Gambling Act.

[31 Cal. page 928].

(D.) SAMIRUDDIN SARKAR v.
NIBARAN CHANDRA GHOSE.

CRIMINAL BREACH OF TRUST—*Breach of trust of gross sum—Criminal Procedure Code (Act V of 1898) ss. 222, 234—Charge—Penal Code (Act XLV of 1860) s. 408.* Where an accused person was charged under s. 408 of the Penal Code with having committed criminal breach of trust in respect of a gross sum of money misappropriated by him within the period of one year and the charge not only specified the gross sum taken and the dates between which it was taken, but also set out the items, twenty-two in number, composing such gross sum, giving the dates and the amount alleged to have been misappropriated on each date:—*Held*, that the charge came within the provisions of clause 2 of s. 222 of the Criminal Procedure Code. *Held*, also, that by specifying the items composing the gross sum the charge went beyond what was necessary and was to that extent favourable to the accused. *Emperor v. Gulzari Lal*, I. L. R. 24 Al. 254. followed.

[31 Cal. page 979].

[E.] MARUK DHARI TEWARI v.
HARI MADHAB DAS.

PUBLIC NUISANCE—*Public way, obstruction in—Bona-fide claim of title—Reasonable and proper order—Jury—Verdict—Criminal Procedure Code [Act V of 1898] ss. 133, 139.* Where in a proceeding under s. 133 of the Criminal Procedure Code the opposite party, in showing why an obstruction should not be

moved from a public way, alleged that the way was the private property of his employer and asked for a jury to be appointed and the Magistrate instead of first satisfying himself as to the *bona fides* of the claim referred the following question to the jury:—“Is there a public right-of-way at the points where stand the buildings whose removal has been ordered?” *Held*, that this was not a proper reference. What the jury had to try was whether the Magistrate’s order was reasonable and proper.

[31 Cal. page 983.]

(A). EMAMAN v. EMPEROR.

PRESIDENCY MAGISTRATE—*Judgment—Record of reasons for conviction—Evidence—Sentence of imprisonment—Criminal Procedure Code (Act V of 1898), s. 370, cl. (i).* S 362 of the Criminal Procedure Code prescribes that the evidence in appealable cases, that is, in which a Presidency Magistrate imposes a fine exceeding Rs. 200 or imprisonment for a term exceeding six months, shall be duly recorded. There is no obligation in law to record evidence in other cases; the discretion rests with the Magistrate. Under the provisions of s. 370, cl. [i] of the Criminal Procedure Code, the Magistrate should state the reasons for conviction in such a manner that the High Court on revision may judge whether there were sufficient materials before him to support the conviction. The law does not demand a full and complete statement of reasons, but only a brief one.

[31 Cal. page 990].

[B.] SHYAMANAND DAS PAHARAJ v. EMPEROR.

PUBLIC SERVANT, ORDER PROMULGATED BY—*Hats—Disobedience—Breach of the peace—Penal Code (Act XLV of 1860) s. 188—Criminal Procedure Code (Act V of 1898) s. 144.* Although a Magistrate acting under s. 144 of the Criminal Procedure Code is empowered to make an order prohibiting a person from holding a *hat* on certain specified days of the week, the terms of the law do not empower a

Magistrate to make a direction that the *hat* shall be held upon certain days leaving the party no option to hold his *hat* upon some other days than those on which his rival hold his *hat*. Before a person can be convicted under s. 188 of the Penal Code for having disobeyed an order passed by a Magistrate under s. 144 of the Criminal Procedure Code, there must be some evidence on the record showing that the disobedience of the Magistrate’s orders was likely to lead to a breach of the peace.

[31 Cal. page 1007].

(C). EMPEROR v. PROSANNA KUMAR DAS.

JOINT TRIAL—*Same transaction—Previous conviction—Counterfeit Coin—Possession, delivery of—Criminal Procedure Code Act V of 1898 ss. 235, 239, 403—Indian Penal Code Act XLV of 1860 ss. 240, 243.* C gave the appellant 50 counterfeit rupees to pass for him. These rupees were stolen and the appellant on the discovery of the theft gave certain information to the police, which led to the discovery of 34 other counterfeit coins in C’s house. C was separately tried and convicted under s. 243 of the Penal Code of being in possession of the latter coins. C and the appellant were also tried jointly and were convicted; C under s. 240 of the Penal Code with reference to the 50 counterfeit rupees he had made over to the appellant, and the appellant under s. 242 of the Code of being in possession of the said rupees. On appeal it was contended that C could not be tried for an offence under s. 240 after he had been previously convicted of the possession of base coin under s. 243 of the Penal Code and further that the joint trial was bad in law. *Held*, that the joint trial was valid that the trial of C under s. 240 of the Penal Code was legal, it being for an offence distinct to that for which he had been previously convicted.

[31 Cal. page 1050].

[D.] EMPEROR v. ROBERT STEWART.

REPLY, PROSECUTOR’S RIGHT OR—*Deposi-*

tions of witnesses before committing Magistrate—Evidence adduced by accused—Criminal Procedure Code (Act V of 1898 ss. 162, 288, 289, 292.) In a Sessions trial before the High Court, the accused, before he was asked by the Court under s. 289 of the Criminal Procedure Code whether he meant to adduce evidence, put in as evidence on his own behalf the deposition of certain witnesses taken before the committing Magistrate, which formed part of the record sent up by the Magistrate:—*Held*, that this could not be said to be 'evidence adduced by the accused' after the case for the prosecution had been closed, and that the prosecution was therefore not entitled to reply under s. 292.

[31 Cal. page 1053]:

(A.) HIRA LAL THAKUR v.
EMPEROR.

JOINT TRIAL—Different transactions—New trial—Criminal Procedure Code (Act V of 1898) ss. 235, 239—Indian Penal Code (Act XLV of 1860) ss. 403/109, 414 420, 471.) On the 23rd August 1903 the appellant obtained a payment from the firm of S. R. R. D. of Rs. 5,000 in currency notes of Rs. 500 each on a *hundi*, by falsely representing himself to be a durwan of the firm of H. R. R. C. On the 22nd January 1904 the appellant accompanied by S. T. went to a shop and purchased some silk, and in payment S. T. gave a note of Rs. 500, which was one of the notes received by the appellant on the 23rd of August. The appellant and S. T. were tried jointly and were convicted,—the appellant under ss. 420, 471 and 403 of the Penal Code with regard to the occurrence of the 23rd August, and S. T. under ss. 403/109 and 414 of the Penal Code with regard to the occurrence of the 22nd January:—*Held*, that the joint trial was bad in law, and that a new trial should be held by a different Magistrate.

[32 Cal. page 22].

(B.) BIRENDRA LAL BHADURI v.
EMPEROR.

CHARGE, ADDITION TO OR ALTERNATIVE OF—Indictment, subject-matter of—Cheating—"Property"—Money—Criminal Procedure Code (Act V of 1898) ss. 226 227—Penal Code (Act XLV of 1860) s. 420.]

The Sessions Court is not a Court of original jurisdiction and though vested with large powers for amending and adding to charges, can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to matter not covered by the indictment. The accused was put upon his trial before the Sessions Court on charges under ss. 471 and 417/511 of the Penal Code. Upon motion to the High Court it was held that a previous acquittal covered the charge under s. 471, and that the accused could be tried only under s. 417/511. When the case came to trial the Sessions Judge amended the charge to one under s. 420/511:—*Held*, that the Judge had full power under the law to amend the charge, and that the High Court did not intend to fetter his discretion. The word "property" in s. 420 of the Penal Code includes money.

[32 Cal. page 73].

(C.) SHANKAR BALKRISHNA v.
KING-EMPEROR.

RAILWAY COLLISION—Endangering safety of persons—Death by rash or negligent act—Contributory Negligence—Indian Penal Code (Act XLV of 1860) s. 304 A.—Indian Railways (Act IX of 1890) s. 101.[The Bengal-Nagpur Railway is worked on the "line clear and caution message" system, no train being allowed to leave a station without a "line clear" certificate, in a prescribed form, to the effect that the line is clear up to the next station. The petitioner, the assistant station-master of Gomharria Station, who was on duty and busy issuing tickets to passengers, wrote out in the prescribed form-book the following conditional line clear message, although he had received no message from Sini Station: "on arrival of 15 down passenger at Gomharria, line will be cleared for No. 80 up goods train from Gombarria to Sini." All the particulars required by the rule were not filled in, no number was entered on it, nor was the time of arrival of the train filled in. The form-book was left in the station-master's room. The guard of No 80 up goods train which was waiting at Gomharria entered the station-master's room in his absence, took the imperfect,

certificate out of the book and without reading it appended his signature, passed it on to the driver, and gave the signal for the train to start,—all without the knowledge of the petitioner. The result was a collision between the 15 down passenger train and 80 up goods train, causing the death of several persons. The petitioner was convicted under s. 304 A of the Penal Code and s. 101 of the Indian Railway Act of 1890, and sentenced to rigorous imprisonment:—*Held* that the act of the petitioner did not in itself endanger the safety of other persons, and that the effect was too remote to be attributable to such a cause. *Sant Doss v. The Empress, Ind. Ry. Cas.* 722. followed.

[32 Cal. page 80.]

[4.] RAGHUNANDAN PERSHAD AND OTHERS v. EMPEROR

CUSTODY, DETENTION IN—*Security for keeping the peace—Arrest—Bail, right to—Power to re-arrest—Criminal Procedure Code (Act V of 1898), ss. 107, 114, 115, 496, 498.* Where proceedings have been instituted against a person under s. 107 of the Criminal Procedure Code, it is only in the special circumstances referred to in clause (3) and (4) of that section that the law empowers a Magistrate to detain the person in custody until the completion of the inquiry. Section 496 of the Code is imperative, and under its provisions the Magistrate is bound to release such person on bail or recognizances. *Quære*: whether the proviso to s. 114 of the Code empowers a Magistrate to re-arrest a person who has already appeared and been admitted to bail.

[32 Cal. page 154.]

[B.] UMATL FATIMA v. NEMAI CHARAN BANERJEE.

DIVISION OF CROPS, ORDER FOR—*Jurisdiction of Magistrate—Criminal Procedure Code (Act V. of 1898) s. 114—Irrevocable order*]. An order for Division of crops between the tenants and a rival zemindar does not come within the purview of s. 114 of the Criminal Procedure Code; nor is a Magistrate empowered to make an order of an irrevocable nature under that section.

[32 Cal. page 178.]

[C.] EKCOWRI MUKERJEE v. EMPEROR.

PRACTICE—*Appeal—Criminal Procedure Code (Act V of 1898), s. 421—Judgment of Appellate Court, contents of.* It is very desirable that an Appellate Court, without going to the length of writing an elaborate judgment should, in deciding a criminal appeal notice briefly but clearly the objections urged on appeal, and how they were disposed of.

[32 Cal. page 182].

[D.] EMPEROR v. SARADA PROSAD CHATTERJEE.

SANCTION FOR PROSECUTION—*False charge—False information—Indian Penal Code (Act XLV of 1860) ss. 182, 211—Criminal Procedure Code (Act V of 1898) s. 195.* The accused, a railway station-master, sent the following telegram to a head-constable of the Railway Police—"A bag of paddy was stolen from my goods-shed last night. Thief was caught. Please come, prosecute him." The head-constable inquired into the matter and reported it to be false. The Inspector of Police, in submitting the case to the District Magistrate, recommended that the station-master should be called upon to show cause why he should not be prosecuted under s. 182 or s. 211 of the Penal Code. A judicial inquiry was held by a Deputy Magistrate, and the District Magistrate sanctioned the prosecution of the accused. The accused was tried and convicted under s. 182 of the Penal Code, by an Assistant Magistrate with second class powers:—*Held*, that the sanction given by the District Magistrate was sufficient; that a prosecution for a false charge might be under the 182 or s. 211 of the Penal Code, but if a false charge was a serious one, the proper course would be to proceed under s. 2 of the Code. *Bhokteram v. Hera Kalita* I. L. R. 5 Cal. 184, *Russick Lal Mullick, In re* 7 C. L. R. 382, followed.

[32 Cal. page 247].

[A.] SARAT CHANDRA GHOSE v. KING EMPEROR.

OBSCENE POST-CARDS—Post-Cards containing obscene advertisement—Post Office Act (VI of 1898), ss. 20, 61.] Transmission by post of printed post-cards containing an advertisement of a patent medicine, in language of an obscene character, is an offence within ss. 20 and 61 of the Post Office Act (VI of 1898). *The Queen v. Hicklin*, L. R. 3 Q. B. 60; *Empress of India v. Indurman*, I. L. R. 3 All. 837; and *Queen-Empress v. Parashram Yeshwant*, I. L. R. 20 Bom. 193, relied upon.

[32 Cal. page 249.]

(B.) RADHA RAMAN GHOSE v. BALIRAM RAM.

PARTNERSHIP PROPERTY, DISPUTE RELATING TO THE MANAGEMENT OF—Criminal Procedure Code (Act V of 1898) s. 145—Possession as managing-partner.] A dispute between partners claiming exclusive possession of the partnership property as managers, is outside the purview of s. 145 of the Criminal Procedure Code.

[32 Cal. page 287].

(C.) BHOLANATH SINGH v. WOOD.

JURISDICTION OF MAGISTRATE—Criminal Procedure Code (Act V of 1898), s. 145—Parties—Manager—Title—Possession—Encroachment.] The fact that the manager, and not his employer, the zemindar, has been made a party to a proceeding under s. 145 of the Criminal Procedure Code is a mere irregularity, or at most an error of law, which does not effect the Magistrate's jurisdiction. *Dhondhai Singh v. Follet*, I. L. R. 31 Cal. 48, referred to. Where a party claims no easement or customary right, any intermittent acts of encroachment on his part, such as cutting a few trees or felling some underwood, would not affect the title or possession of the superior landlord.—*Framji Cursetji v. Goculdas Madhujji*, I. L. R., 16 Bom. 338; *Agency Company v. Short*, L. R., 13 App. Cas. 793, referred to.

(32 Cal. page 292)

(D.) RATAN MOMI DEY v. KING-EMPEROR.**ILLEGAL GRATIFICATION, ATTEMPT TO**

OBTAIN—Penal Code (Act XLV of 1860) s. 161—Demand of 'dasturi' by Civil Court, peon. A demand of *dasturi* by Civil Court peon from the plaintiff, as a motive or reward for serving the summonses on his witnesses without an identifier, amounts to an attempt to obtain an illegal gratification within s. 161 of the Penal Code. *Empress of India v. Baldeo Sahai*, I. L. R., 2 All. 253, followed. *Queen-Empress v. Ramakka*, I. L. R., 8 Mad. 5 distinguished.

(32 Cal. page 351.)

[E.] JOGEN R. NATH MOOKERJEE v. SARAT CHANDRA BANERJEE.

SANCTION FOR PROSECUTION—Whether a sanction granted to a particular person could be availed of by some other person—Criminal Procedure Code (Act V of 1898) s. 195.] A sanction for prosecution expressly given to a particular applicant cannot be availed of by some other person against that person's wish and without his authority. *Giridhari Mondal v. Uchit Jha*, I. L. R. 8 Cal. 435, *Bayaram Surma v. Gouri Nath Dutt*, I. L. R. 20 Cal. 474, *In re Banarsi Das*, I. L. R. 18 All. 213, *Kali Kintar Sett v. Nritga Gopal Roy*, 8 C. W. N. 883, and *Durga Das Rukhit v. Queen-Empress*, I. L. R. 27 Cal. 820, referred to.

(32 Cal. page 367.)

[F.] HARA CHARAN MUKERJEE v. KING-EMPEROR.

JUDICIAL PROCEEDING, Offence in the course of—Resistance to delivery of possession—Criminal Procedure Code (Act V of 1898) ss. 4 (m), 476—Jurisdiction—Civil Procedure Code (Act XLV of 1882 s. 312.) Where in an execution case a warrant for the delivery of possession of lands was entrusted for execution to the Nazir who went to the spot but was obstructed by the opposite party to the suit, and on his reporting the matter, the Munsif held an enquiry under s. 476 of the Criminal Procedure Code and sent the accused to the Magistrate for trial under s. 186 of the Penal Code:—*Held*, that the "judicial proceeding" in the case determined when

the Munsif finally decided the case, there being no further question left for determination as to the rights of the parties to the suit upon which evidence could have been legally taken, that the obstruction was not therefore brought to the notice of the Munsif in the course of a "judicial proceeding," and that he had no jurisdiction under s. 476 of the Criminal Procedure Code to hold an inquiry.

(32 Calc. page 425.)

(A.) THAKUR DAS SAR v. ADHAR CHANDRA MISSRI.

DEFAMATION—Hindu widow—Complaint by brother—"Person aggrieved"—Jurisdiction—Criminal Procedure Code (Act V of 1898) s. 198. Where the alleged offence was defamation imputing unchastity to a Hindu widow:—*Held*, that her brother, with whom she was residing at the time, was a "person aggrieved" by such imputation within the terms of s. 198 of the Criminal Procedure Code, and it was competent to the Court to take cognizance of the offence upon his complaint.

(32 Calc. page 431.)

(B.) DOWLAT RAM v. EMPEROR.

TRADE MARK—User bona fide dispute as to right of—Criminal proceedings, propriety of—Penal Code (Act XLV of 1860) s. 486.] In a prosecution for counterfeiting a trade-mark, if the Magistrate is of opinion there is a bona fide dispute between the parties as to the right of user of such mark, he should not deal with the matter criminally but leave it to the complainant to establish the right claimed in a Civil Court.

Emperor v. Bakaulah Mallik (I. L. R. 31 Calc. 411) referred to.

(82 Cal. page 444),

(C.) KORBAN v. EMPEROR.

KIDNAPPING FROM LAWFUL GUARDIANSHIP—Mohomedan Law—Mahomedan minor guardianship of—Preferential right of Mahomedan mother—Penal Code [Act XLV of 1860] ss. 361, 363.] Under the Mahomedan law the mother is entitled to the custody of her daughter, in preference to the husband, until the girl

attains the age of puberty. The removal of an immature Mahomedan girl of eleven or twelve from the house of her mother-in-law in whose charge the husband had left her, by a third person acting at the instance, and under the instigation of her mother, is not a taking from "lawful guardianship," and does not amount to kidnapping." *Nur Kadir v. Zuleikha Bibi* I. L. R. 11 Calc. 649 referred to

[32 Calc. page 469]

(D.) KALI KINKAR SEIT v. NRITYA GOPAL ROY.

SANCTION FOR PROSECUTION—Initiation of proceedings—Prosecution by another without authority—Presidency Magistrate—Criminal Procedure Code (Act V of 1898) ss. 195, 200(b)—Practice. Under a sanction to prosecute expressly restricted to a certain person, the prosecution may be initiated by another person expressly authorized by him to whom the sanction was granted; but such authority must be a matter of record so as to enable the accused to challenge its validity both before the Magistrate and also on appeal or revision. A Presidency Magistrate is not excused by s. 200, cl. (b) of the Criminal Procedure Code from recording the necessary evidence of such authority.

(32 Calc. page 550)

[E.] SADANANDA PAL v. EMPEROR.

CONFESSION—Accused—Signature—thumb impression—General Clauses (Act V of 1897 s. 3 cl. (52)—Criminal Procedure Code (Act V of 1898) s. 164.] A thumb mark affixed to a confession by an accused able to write his name is not a "signature" within the meaning of s. 3, cl. (52) of the General Clauses Act or s. 164 of the Criminal Procedure Code.

(32 Calc. page 552.)

[F.] BANWARI LAL MUKERJEE v. HIRIDAY CHAKRAVARTI.

JURISDICTION—Magistrate—Criminal Procedure Code (Act V of 1898, s. 145 cl. (1), (6)—Omission to record initiatory order—Arbitration, reference to. Where proceedings under s. 107 of the Criminal Procedure Code were instituted against the parties, and on their appearance the

the Magistrate, considering that the dispute came within s. 145 of the Code, treated the case as one instituted under the latter section, and adjourned it for the evidence of their respective claims to actual possession, without recording an order under sub-section [1]:—*Held*, that the drawing up of a formal order under sub-section [1] was absolutely necessary to the initiation of proceedings under s. 145, and the omission to do so rendered them bad for want of jurisdiction. Section 145 does not contemplate that the question of actual possession should be delegated, even by the consent of the parties, to arbitration. It directs the Magistrate himself to receive the evidence produced by the parties, and to come to a decision in consideration thereof.

[32 Calc. page 557.]

[A.] KASHI NATH BANIA v.
EMPEROR.

OPIMUM—*Opium, illegal possession of—Opium Act [I of 1878 s. 9, cl. c.—Potential possession—Possession of railway receipt for an undelivered parcel containing opium—Guilty knowledge.* The possession of a railway receipt by the consignee of an undelivered parcel of contraband opium, under circumstances showing that he was aware of the contents of the parcel and that it was sent to him with his full knowledge amounts to “possession of opium,” within the meaning of s. 9, cl. (c) of the Opium Act. *Reg v. Hill*, 1 Den C. C. 453 and *Reg v. Wiley*, 2 Den C. C. 37, referred to.

(32 Calc page 602.)

(B.) PRAYAG MAHATON v.
GOBIND MAHATON.

JURISDICTION—*Immoveable property, dispute as to—Bundh—Possession—Title—Costs—Damages—Criminal Procedure Code [Act V of 1898] ss. 145, 148.* Proceedings under s. 145 of the Criminal Procedure Code were instituted with reference to a *bundh* erected by the second party upon land claimed both by the first and second parties.

The Magistrate treated the case as if it were solely one of title and made an order directing the removal of the *bundh*, and he further awarded one of the parties Rs 50 for the damage done to his crops as

well as for costs in the case.

Held that the entire order was illegal and should be set aside, including the order as to costs.

[32 Calc. page 664.]

[C.] BHAGWATI SAHAJ v.
EMPEROR.

PUBLIC SERVANT—*Clerk to a Sub-Registrar—Illegal gratification—Penal Code [Act XLV of 1860] ss. 21, 161—Registration Act [III of 1877] ss. 6 to 14 69, 84.* A clerk appointed by a Sub-Registrar and paid out of an allowance given to the Sub-Registrar, is not a “public servant” within the meaning of s. 21 of the Penal Code.

[32 Calc. page 756.]

(D.) HAIDAR ALI v. ABRU MAT.

DEFAMATION—*Voluntary statement by witness—Privilege of witness—Malice—False evidence—Penal Code [Act XLV of 1860] s. 500—Evidence Act (I of 1872) s. 132.* A witness, who being actuated by malicious motives makes a voluntary and irrelevant statement not elicited by any question put to him while under examination to injure the reputation of another commits an offence punishable under s. 500 of the Penal Code. *Moher Sheikh v. Queen-Empress* I. L. R. 21 Calc. 392 followed. *Woolfun Bibi v. Jesarat Sheikh* I. L. R. 27 Calc. 262, discussed.

[32 Calc. page 759].

[E.] EMPEROR v. ABDUL HAMID.

THUMB-MARK—*Thumb-mark, evidentiary value of—Blurred impressions—Expert opinion, grounds of—Judge—Jury—Power of Judge to question the Jury—Criminal Procedure Code (Act V of 1898) s. 303.* Where certain thumb impressions were blurred, and many of the characteristic marks, therefore, far from clear, thus rendering it difficult to trace the features enumerated by an expert as showing the identity of the impressions, and the Court could only find a distinct similarity in some respects, e.g., pattern and central core:—*Held* that the Jury were not refusing to accept the opinion of the expert. *Per Geidt J.* A Jury may decline to accept the opinion of an expert

without the corroboration of their own intelligence as to the reasons which guided him to his conclusion with respect to the identity of the impressions. *Per Henderson J.* It is only when it is necessary to ascertain what the verdict really is that s. 303 of the Criminal Procedure Code justifies the Judge in putting questions to the Jury. Where, therefore, on a charge under section 82 (c) of the Registration [Act III of 1877] the verdict was a plain and simple one of not guilty, the Judge was not empowered to ask the Jurors whether they found that the thumb impression on the bond alleged to have been forged was that of the accused.

[32 Cal. page 771].

[A.] NITYANAND ROY v. PARESH NATH SEN.

JURISDICTION OF MAGISTRATE—*Dispute relating to a kutchery—Initiatory Order—Omission to state the grounds of the apprehension of a breach of the peace—Reference to information obtained in a local inquiry not recorded—Order as to costs—Criminal Procedure Code [Act V of 1898] ss. 145 cl. (1) 148.* If the Magistrate omits in the initiatory order under s. 145 cl. (1) of the Criminal Procedure Code to state the grounds of his being satisfied as to the likelihood of a breach of the peace, the final order is without jurisdiction. Where, therefore, the initiatory order merely referred to some information, which was obtained during the course of a local inquiry held by himself but had not been reduced into writing:—*Held* that the proceedings under s. 145 were bad in law. In a case initiated upon a police report or other information, which has been reduced into writing reference can be made to the materials upon which the Magistrate acted, to ascertain whether there were in fact grounds upon which he might have acted, but even then it is his duty to state the grounds, upon which he was satisfied that there was a likelihood of a breach of the peace. *Queen-Empress v. Gobind Chandra Das I. L. R. 20 Cal. 520, Dhanput Singh v. Chatterput Singh I. L. R. 20 Cal. 513; Mohesh Sower v. Narain Bag I. L. R. 27 Cal. 981 and Jagomohan Pal v. Ram Kumar Gope, I. L. R. 28 Cal. 416, referred to.*

[32 Cal. page 775.]

(B.) BABURAM RAI v. EMPEROR.

CHEATING—*Cheating by personation—Penal Code (Act XLV of 1860) ss. 415 419—Personation—Minors.* On an application by the *kurta* of a joint Hindu family in his representative character, to withdraw certain surplus sale-proceeds standing to their credit in the Treasury, the Collector directed him either to file a power of attorney or to cause all the other members to appear and admit his authority to sign on their behalf. They all appeared in person before the sheristadar, except two minors, who were personated by other persons, and signed receipt for the money and caused the personators to sign in the names of the minors. Thereupon the Collector, after inspecting the signatures issued a bill in their favour for the amount due, which they withdrew; *Held* that upon the facts the offence of cheating was not made out. *Reg v. Longhurst* unreported. *In re Loothy Bewa, 11 W. R. (Cr. 24* referred to.

[32 Cal. page 783.]

[C.] AJAB LALKHIRHER v. EMPEROR.

CRIMINAL COURT—*Jurisdiction—Deputy Magistrate—District Magistrate—Subordinate Court—Cognizance—Process.* Where on a police report cognizance was taken by a Joint Magistrate (acting for the District Magistrate) of an offence alleged to have been committed by several persons, and the case was made over to a Deputy Magistrate for disposal, and the Deputy Magistrate tried and convicted some of the accused persons mentioned in the original complaint, and on his refusal to proceed against the rest of the accused, the Joint Magistrate ordered a summons to issue against them:—*Held, per Henderson J.* The following propositions may be deduced from the authorities quoted:—(i.) That the order of the Deputy Magistrate refusing to issue process on the ground that it was unnecessary to take further action, amounted to a discharge; (ii) that the order making over the case to the Deputy Magistrate for disposal was an order making over the whole case mentioned in the original Police report to the Deputy Magistrate.

(iii) that until the District Magistrate had withdrawn the case so made over from the file of the Deputy Magistrate to that of his own Court, he had no power to make any order save an order for further enquiry under s. 437 of the Criminal Procedure Code. *Held*, per GEOR J., that the case having been transferred to the Deputy Magistrate that Officer alone had jurisdiction to deal with any application for a summons, until the case was withdrawn from his cognizance; the order of the Joint Magistrate to issue a summons was, therefore, not warranted by law. *Golapdi Sheikh v. Queen Empress* I. L. R. 27 Cal. 979. *Moul Singh v. Mahabir Singh*, 4 C. W. N. 242, and *Radhabullav Roy v. Benode Behari Chatterjee*, I. L. R. 30 Cal. 449, referred to.

[32 Cal. page. 793.]

[4.] RAM GOPAL DAW v. EMPEROR.

BREACH OF THE PEACE—*Disobedience of order—Evidence—Penal Code (Act XLV of 1860), s. 188, Criminal Procedure Code (Act V of 1898) s. 144.* To constitute an offence under s. 188 of the Penal Code of disobedience to an order issued under s. 144 of the Criminal Procedure Code, there must be *finite* evidence on the record to show that such disobedience is likely to lead to a breach of the peace. *Brojo Nath Ghose v. Empress*, 4 C. W. N. 226.

[32 Cal. page 796.]

[B.] GULRAJ MARWARI v. SHEIK BHATO.

JURISDICTION—*Criminal Procedure Code (Act V of 1898) ss. 145, 146—Possession given by Civil Court—Practice.* Where the petitioner had eight days before the institution of proceedings under s. 145 of the Criminal Procedure Code been put in possession of a portion of the disputed plots of land by the Civil Court in execution of a decree establishing his rights to the same. *Held*, it was the duty of the Magistrate in the proceedings under s. 145 of the Code of Criminal Procedure to find possession

of that portion in accordance with the decree of the Civil Court. The order so far as it directs the attachment of the disputed land covered by that decree is without jurisdiction.

[32 Cal. page 930.]

[C.] ZAFFER NAWAB v. EMPEROR.

PUBLIC NUISANCE—*Obstruction of ford by erection of bund—Prescriptive right of public to user of ford—Disuetude of right to erect bund—Use of one's right so as not to cause obstruction or nuisance—Criminal Procedure Code (Act V of 1898) s. 133.* Where the petitioner erected a bund in a river, the effect of which was to render it unfordable at a place where the stream had been fordable throughout the year, except for a few days during the freshets, and claimed the right to do so, but it was proved that for a period exceeding 20 years the public had used the ford, and had never been so obstructed in crossing the river on foot or on vehicles. *Held*, that the public had acquired a prescriptive right of way through the river and that the petitioner had lost his right of erecting a bund by long disuetude; that even if the petitioner had a subsisting right to dam the river by a bund, such right was subject to the maxim *sic utere tuo ut alienum non laedas*; that his action had caused an obstruction, which was not justifiable to the public who were in the lawful enjoyment of a right of way and that the order of the Magistrate to remove the obstruction was not illegal.

[32 Cal. page 935.]

[D.] KAROOLAL SAJAWAL v. SHYAM LAL.

MAGISTRATE—*Jurisdiction—Tenant—Sub-tenant—Omission to state material facts in the order—Criminal Procedure Code (Act V of 1898) s. 144.* Before a Magistrate can take action under s. 144 of the Criminal Procedure Code he must be of opinion that immediate prevention or speedy remedy is necessary, and when he has made up his mind that it is so, he must state the material facts in

the order. Where therefore, a Magistrate passed an order directing the second party not to interfere with the first party in the cultivation of his *khas* lands or the collection of rents from his under-tenants, and it did not appear from the proceedings that he was of opinion that immediate prevention or speedy remedy was necessary and the order made did not state the material facts of the case: *Held* that the order was bad and must be set aside.

(32 Cal. page 941.)

(A). KHODA BUX v. BAKEYA MUNDARI.

CHATTING—Deception—False representation—Conduct—Penal Code (Act XLV of 1860) s. 415. To constitute the offence of cheating under s. 415 of the Penal Code, it is not necessary that the deception should be by express words, but it may be by conduct, or implied in the nature of the transaction itself. *Queen v. Sheodurshun Dass*, 3 All. H. C. 17 referred to.

(32 Cal. page 948.)

(B). BARKA CHANDRA DEY v. JANMEJOY DUTT.

SECURITY TO KEEP THE PEACE—Jurisdiction—Bond, cancellation of, before actual execution—Criminal Procedure Code (Act V of 1898) ss. 107, 125—Appeal—Revision. S. 125 of the Criminal Procedure Code does not confer upon a District Magistrate either an appellate or revisional jurisdiction in respect of orders binding down persons to keep the peace made by Courts subordinate to his own, but it confers only an original jurisdiction. After a bond to keep the peace has been executed, a District Magistrate may hold, for sufficient reasons, that it is no longer necessary and cancel it; but he has no power to declare that it was never necessary. There is no appeal from an order requiring security to keep the peace.

(32 Cal. page 966.)

(C). SHEORAJ ROY v. CHATTER ROY.

SECURITY TO KEEP THE PEACE—

Dispute relating to possession of land—Institution of proceedings—Discretion of Magistrates—Criminal Procedure Code [Act V of 1898.] ss. 107, 144, 145.

Where a dispute relating to possession of land is likely to cause a breach of the peace, a Magistrate has a discretion to proceed either under s. 107 or under ss. 144 and 145 of the Criminal Procedure Code. *Sarodu Prosad Singh v. Emperor*, 7 C. W. N. 142, not followed. *King-Emperor v. Basiruddin Mollah*, 7 C. W. N. 746. *Belagol Ramachari v. Emperor*, I. L. R. 26 Mad. 471, followed.

[32 Cal. page 949]

[D] MATILAL PREMSUK v. KANHAI LAL DASS.

TRADE-MARK—False or counterfeit trade-mark, use of—Penal Code [Act XLV of 1860] ss. 482, 486 Merchandise Mark's Act [V of 1889] s. 6. K. a merchant of Calcutta ordered certain goods from Europe, but refused to take delivery of the consignment on its arrival in Calcutta. The goods were thereupon sold in the market with the labels of the firm of K attached thereto, and were purchased by M. a dealer in piece-goods. M sold the goods without removing the labels of K, and was convicted under s. 486 of the Penal Code for selling the goods with a counterfeit trade-mark:—*Held*, that, no offence was committed by M either under s. 482, or s. 486 of the Penal Code.

[32 Cal. 1069].

[E]. TARA CHAND SINGH v. EMPEROR.

REMAND—appeal—Sessions Judge, power of—Jurisdiction—Practice. A Sessions Judge, while disposing of a criminal appeal, has no authority under the Code of Criminal Procedure to remand the case when the judgment of the Court below is unsatisfactory, directing it to write out a proper judgment after rehearing the parties, if they so desire. It is the duty of the Sessions Judge in such a case to go fully into the whole facts and dispose of the appeal. He cannot devolve this duty on the Court below.

[32 Cal. page 1085].

[A.] SAT NARAIN TEWARI v. EMPEROR.

CRIMINAL BREACH OF TRUST—Charge—*Misjoinder of charges—Statement by accused—Confession—Admission—Evidence, admissibility of—Criminal Procedure Code (Act V of 1898) ss. 164, 202, 222, 234, 364.* An accused was tried for criminal breach of trust in respect of three distinct sums, and one charge was drawn up specifying all the three sums and the persons from whom he collected them. He was not charged with three offences, but with one offence under s. 409 of the Penal Code, and was convicted of one offence and sentenced to one term of imprisonment:—*Held*, that the charge as framed was not contrary to law, it being in accordance with ss. 222, sub-s. (2) and 234 of the Code of Criminal Procedure. *Emperor v. Gulare Lal*, I. L. R. 24 All. 254, *Samiruddin Sarkar v. Nibaran Chandra Ghose*, I. L. R. 31 Cal. 928, and *Emperor v. Ishtiaq Ahmad*, I. L. R. 27 All. 69, referred to; *Subrahmanya Ayyar v. King Emperor*, I. L. R. 25 Mad. 61, distinguished. An admission or confession made before a Magistrate carrying on an inquiry under s. 202 of the Criminal Procedure Code, is not a statement recorded under s. 164 or 364 of the Code, and is therefore not admissible in evidence against the accused without further proof,

[32 Cal. page 1090].

[B.] WAHED ALI v. EMPEROR.

DISTRICT MAGISTRATE—Accused—Discharge—Omission to state reasons in the order for further inquiry—Criminal Procedure Code (Act V of 1898) s. 437. It is not as a matter of law, obligatory on a District Magistrate to issue a notice upon the accused before directing a further inquiry under s. 437 of the Criminal Procedure Code, but, according to the general principle of criminal jurisdiction, no order prejudicially affecting an accused should be passed without giving him an opportunity of being heard. It is not ordinarily desirable that a District Magistrate should make a detailed examination of the evidence and give elaborate reasons for ordering a further inquiry, but it is

desirable that he should give enough reasons to show that his order is a proper one.

[32 Cal. page 1093].

[C.] TARAPADA BISWAS v. NURUL HUQ.

WITNESSES—Process—Magistrate—Extraordinary jurisdiction of the High Court—Prejudice—Criminal Procedure Code (Act V of 1898) s. 145—Charter Act (24 and 25 Vic. c. 104.) s. 15. It is not obligatory on a Magistrate to assist parties to a proceeding under s. 145 of the Criminal Procedure Code in producing their witnesses, and they cannot claim as a matter of right that process should be issued by the Court to enable them to bring forward their evidence. *Hurendro Narain Singh v. Bhobani Prea Barua*, I. L. R. 11 Cal. 762, *Ram Chandra Das v. Monihar Roy*, I. L. R. 21 Cal. 29, *Madhab Chandra Tanti v. Martin*, I. L. R. 30 Cal. 508 note, *Surjya Kanta Acheryee v. Hem Chander Chowdhry*, I. L. R. 30 Cal. 508, and *Rudha Nath Singh v. Mangal Gheri*, 2 C. L. J. 286 note dissented from. *Manmatha Nath Mitter v. Baroda Prasad Roy*, I. L. R. 31 Cal. 685 referred to. The powers of superintendence under s. 15 of the Charter Act should, in cases under s. 145 of the Criminal Procedure Code, be exercised with caution; and the Court ought not to interfere, unless satisfied that the party has been prejudiced by the proceedings in the Court below. *Sukh Lal Sheikh v. Tara Chand*, 9 C. W. N. 1046 followed. Where a party had obtained summonses upon his witnesses, and on the failure of some of them to appear, applied for fresh summonses against them, which the Magistrate refused, and where it was further alleged that he had refused to allow a witness to prove certain documents: *Held*, that there was nothing to show that the absent witnesses could not have been made to attend without the assistance of the Court, nor whether they were material witnesses, nor that any questions were put to the witness, which were improperly disallowed, and that the party was not, therefore, shown to have been prejudiced.

✓ (33 Cal. page 1).

[A.] JOGENDRA NATH MOOKER-
JEE v. EMPEROR.

COMPLAINANT.—Petition—False Charge—Police—Magistrate's order to show cause without examination of complainant and disposal of complaint—Reference—Inquiry—Criminal Procedure Code (Act V of 1898), ss. 4 (h) 200 to 203—Penal Code (Act XLV of 1860), s. 211. J. laid a charge at the thana against two persons, under s. 433 of the Penal Code, which the police after investigation reported as false. He thereupon filed a petition before the Subdivisional Magistrate impugning the correctness of the police report, and praying that the persons accused by him might be brought to trial. The Magistrate did not examine the complainant, but ordered the petition to be "put up with the police report," and on the next day required him to show cause why he should not be prosecuted under s. 211 of the Penal Code. He afterwards referred the case for inquiry and report to a Sub-Deputy Magistrate with second class powers, who, after examining the complainant and his witness, reported the charge to be maliciously false. The Subdivisional Magistrate then heard J's pleaders and agreeing with the report passed an order directing his prosecution. Held that the petition to the Subdivisional Magistrate was a "complaint" within s. 4 (h) of the Criminal Procedure Code. Held further that, according to the current of decisions of the Court when a person institutes before the police criminal proceedings, found on inquiry to be false, before he can be prosecuted under s. 211 of the Penal Code, he must first have an opportunity of proving his case; that, if he impugns the correctness of the police inquiry by a petition, he is entitled to have the persons complained against tried on the charge, or else his statement must be recorded on oath and his complaint dismissed under s. 203 of the Criminal Procedure Code; and that the order of the Magistrate in the case was therefore bad. In the matter of Chakradar Potti, 8 C. L. R. 289 Queen-Empress v. Sham Lal I. L. R. 14 Cal. 107 Mahadeo Singh v. Queen-Empress I. L. R. 27 Cal. 921 Gunamony Sapti, v. Queen-Empress 3 C. W. N. 758. Budh Nath

Mahato v. Empress 4 C. W. N. 305, Ra Sahiram Agarwala 5 C. W. N. 254. Dasarath Singh v. Emperor unreported. Cr. Rev. No. 2773, dated 14th August 1903, followed, as to the propriety of the Procedure laid down in these cases discussed. Ramasami v. Queen Empress I. L. R. 7 Mai. 292, Imperatrix v. Jijibhai Gound I. L. R. 22 Bom. 596 Queen-Empress v. Raghu Tewari I. L. R. 15 All. 336, referred to.

[33 Cal. page 8].

(B.) DAYANATH TALUQDAR
v. EMPEROR.

FURTHER INQUIRY—Security for good behaviour.—District Magistrate, power of—Criminal Procedure Code [Act V of 1898] s. 110. A District Magistrate has no power under the law to order a 'further' inquiry in a proceeding under s. 110 of the Code of Criminal Procedure after setting aside, on appeal, an order passed by a Subordinate Magistrate directing the accused to furnish security for good behaviour.

(33 Cal. page 20).

[C.] HAIBAT KHAN v.
EMPEROR.

FALSE CHARGE—Police—Deputy Magistrate—Order by the District Magistrate sanctioning a prosecution—Legality of order—Offence not brought to his notice in the course of a judicial proceeding—Criminal Procedure Code (Act V of 1898) s. 476. Where the petitioner laid a charge of mischief by fire at the thana, which was reported to be false, and the District Magistrate, upon the receipt of a report to the same effect from a Deputy Magistrate, to whom he had sent the case for a judicial inquiry, passed the final order in the police report in these terms—"Enter false, section 436, Indian Penal Code. Prosecution under s. 211, Indian Penal Code, sanctioned. To Babu M. N. Mukerjee for trial"—Held that the order of the District Magistrate was made under section 476 and not under section 195 of the Criminal Procedure Code, and was bad, as the matter of the false charge had not come before him in the course of a judicial proceeding. Semble that, if the District Magistrate had made an inquiry into the truth or falsity of the charge, he

might have had power under section 473 of the Code or the Deputy Magistrate, who held the inquiry, might have ordered the prosecution of the petitioner.

(33 Cal. page 33.)

[A.] KULADA KINKAR ROY v.

DANESH MIR.

Breach of the peace—Chur—Police report, contents of—Extraordinary jurisdiction of the High Court—Criminal Procedure Code (Act V of 1898) s. 145—Charter Act (24 & 25 Vic., c. 104) s. 15. A reference by the Magistrate in the initiatory order to a police report, which clearly sets out the likelihood of a breach of the peace, is a sufficient statement of his reasons for being satisfied of the existence of a dispute likely to cause such breach of the peace. *Khoosh Mahomed Sircar v. Nazir Mahomed* 9 C. W. N. 1065 followed. The police report on which the Magistrate founds the initiatory order should contain a statement of facts from which he may be satisfied of the existence of a likelihood of a breach of the peace. It is essential for the assumption of jurisdiction by a Magistrate that he should be satisfied, from a police report or other information, that there is a likelihood of a breach of the peace: the mere fact that there is a dispute concerning land is not sufficient by itself to give him jurisdiction. *Gobind Chunder Moitra v. Abdool Sayad*, I. L. R. 6 Cal. 835, and *Anesh Molla v. Ejaharuddin*, I. L. R. 28 Cal. 446, referred to. The Magistrate should exercise his own judgment in arriving at a conclusion as to the likelihood of a breach of the peace from the materials before him or the circumstances within his knowledge, and he ought not to act upon a mere expression of opinion by the police not accompanied by a statement of facts sufficient to satisfy him and to enable him to form his own opinion. But it is not necessary that the police report should show an actual assembly of men or other specific overt acts. *Pudumonee Dassee, v. Juggodumha Dassee*, 25 W. R. Cr. 2, and *Rajah Run Bahadur v. Rone Tileasuree Koer* 22 W. R. Cr. 79 dissented from. The High Court should not ordinarily examine whether the grounds on which the Magis-

trate was satisfied as to the likelihood of a breach of the peace afford a reasonable foundation for his conclusion. *Dhanput Singh v. Chatterput Singh*, I. L. R. 70 Cal. 513 dissented from. The "imminence" of a breach of the peace, as indicating a higher degree of the chance of the event happening than is denoted by the "likelihood" of it, is not essential for the exercise of jurisdiction by the Magistrate. *Gobind Chunder Moitra v. Abdool Sayad*, I. L. R. 6 Cal. 835, *Kali Kissen Tagore v. Anund Chunder Roy* I. L. R. 23 Cal. 557, and *Janu Manjhi v. Muniruddin* 8 C. W. N. 590 dissented from, *Uma Churn Santra v. Beni Madhub Roy* 7 C. L. R. 352 and *Damodur Biddiyadur Mohapatro v. Syamsund Dry*, I. L. R. 7 Cal. 385 approved of. Under s. 15 of the Charter Act the Court will not interfere unless it is satisfied that the party seeking the interference has been prejudiced by the proceedings in the Court below. *Sukh Lal Sheikh v. Tara Chand Ta*, 9 C. W. N. 1046 followed, *Sheikh Munglo v. Durga Narain Nag* 25 W. R. Cr. 74. *Chunder Madhub Ghose v. Juggut Chunder Sen*, 4 C. L. R. 483. *Queen-Empress v. Gobind Chundra Das*, I. L. R. 20 Cal. 520 and *Kali Kissen Tagore v. Anund Chunder Roy* I. L. R. 23 Cal. 557 explained. *Gour Mohun Majee v. Doolubh Majee*, 22 W. R. Cr. 81 referred to. Where a party chooses to wait and take the chance of a judgment in his favour, he cannot be heard to complain of an excess of jurisdiction and to claims as a matter of right, that the proceedings should be set aside. *Maraden v. Wardel* 3 E. & B. 695 followed. *Farquharson v. Morgan* 1 Q. B. 552, not followed. Their is no inflexible rule of law that a Magistrate, in deciding the question of possession under s. 145 of the Code, is concluded by every previous order of a Civil or Criminal Court relating to the subject of dispute and the weight to be attached to any such previous order depends on the fact and circumstances of the particular case. *Gobind Chunder Moitra v. Abdool Sayad* I. L. R. 6 Cal. 835, *Sims v. Johurna Lal* 5 C. W. N. 563 and *Doulut Koeri v. Rameswari Koeri* I. L. R. 26 Cal. 625 distinguished. *Lowson Santal v. Guli Charan Santal* 8 C. W. N. 719, and *Gurji Murwari v. Sheikh Bhatoo*, I. L. R. 34 Cal. 796 approved of.

[33 Cal. page 50.]

(A.) ASHUTOSH MALLICK v. EMPEROR.

CHEATING—Penal Code [Act XLV of 1860] ss. 415 420—Deception—Dishonesty—"Wrongful loss."—"Wrongful gain." The accused by making a false representation that he was an employee of the Calcutta Municipal Corporation obtained rupees ten as subscription from the Health Officer of that Corporation towards the funds of a charitable society. The money was duly made over by the accused to the charity, but he was subsequently charged with the offence of 'cheating' and was convicted under s. 420 of the Penal Code, and sentenced to rigorous imprisonment and fine:—*Held* that the conviction and sentence should be set aside, there being no such deception in this case as to cause "wrongful loss" or "wrongful gain."

[33 Cal. page 193]

(B) EMPEROR v. MOLLA FUZLA KARIM.

SANCTION TO PROSECUTE—Registrar of the Small Cause Court—Judge—Validity of sanction—Power of the High Court on reference by Presidency Magistrate—Criminal Procedure Code (Act V of 1898), ss. 195 (1), cl. (b), 432 433(1)—Fraudulent decree not set aside by a Civil Court—Penal Code (Act XLV of 1860), s. 210. Where a plaintiff instituted a false suit for money, and fraudulently obtained an *ex-parte* decree therein, before the Registrar of the Calcutta Small Cause Court, who subsequently left the country on furlough, and an application for sanction to prosecute him under ss. 209 and 210 of the Penal Code, in respect of such suit and decree, was made to the Officiating Chief Judge of the Court, and granted by him:—*Held* that the sanction was valid. Ordinarily, as a matter of convenience and expediency, an application for sanction should be made to the Judge who tried the case, if he be present in the Court, but if he is not, it is open to the Court, that is, to any other Judge of the Court to grant sanction. *In the matter of Krishna Gobinda Dutt*, 9 C. W. N. 859, distinguished and dissented from

Ambica Roy v. Emperor, 2 C. L. J. 65 n. referred to. *H. C. Pro. 12th November 1872* 7 Mad. H. C. Ap. XII, followed. Upon a reference under s. 432 of the Criminal Procedure Code the High Court deals only with the particular points of law stated for its opinion, but not with the facts of the case nor any other objection to the validity of the proceedings referred. The offence in s. 210 of the Penal Code is committed when the decree is fraudulently obtained, and the fact that the decree has not been set aside, though admissible to prove that there was no fraud, is not a bar to prosecution under the section.

[33 Cal. page 287.]

(C.) ABDUL SAMAD v. CORPORATION OF CALCUTTA

BUILDING—Deviation—Demolition—Plan—Re-assessment of premises, including portion objected to—Prosecution—Magistrate, discretion of—Calcutta Municipal Act (Bengal Act III of 1899) —Jurisdiction of the High Court to set aside the order. The petitioner completed certain additions to his premises in August 1902, deviating to some extent from the sanctioned plan and he also erected a croking shed at the beginning of 1903 without permission. A part of the premises was re-valued and its assessment increased, in March 1903, in consequence of the improvements, made, including the deviations. In May 1903 a prosecution was instituted against him in respect of the croking shed only, and an order for partial demolition passed in August of the same year. The rest of the premises was re-assessed in September 1904 at a higher rate on account of the improvements. In February 1905 a notice was served on the petitioner to show cause why the additions, which were not in accordance with the sanctioned plan, should not be demolished, and an order was made by the Magistrate in August 1905 directing the demolition of such portion of the premises:—*Held* that under s. 449 of the Calcutta Municipal Act it is discretionary with the Magistrate to pass an order of demolition or

not, and that, under the circumstances of the case, the order was not a fair or proper one and could be set aside by the High Court.

[33 Cal. page 292.]

[1.] **BUDHAISHAIK v. EMPEROR.**

JOINT TRIAL—Offences of the same kind by the same persons on different dates—Separate transactions—Misjoinder of persons—Criminal Procedure Code (Act V of 1898), ss. 233, 234 and 239. The petitioners and others entered upon a plot of land belonging to the complainant on the 22nd February and looted his linseed crop, and on the next day the same persons entered upon another plot and looted his tobacco. They were tried jointly, under the summary procedure, and convicted under ss. 143, 379 of the Penal Code in respect of each occurrence. *Held* that the events of the two different dates were not parts of the same transaction, and that the trial was had for misjoinder under s. 239 of the Criminal Procedure Code. S. 234 by its terms refers to the case of a single accused and is not applicable, where several persons are tried jointly under s. 239.

[33 Cal. page 295.]

[R.] **PORESH NATH SIKKAR v. EMPEROR.**

RIOTING—Common object, omission to find—Failure of the common object charged—Appellate Court—Defective charge—Prejudice—Criminal Procedure Code [Act V of 1898], ss. 423, 537, cl. [a]—Private defence of property in possession of assailants—Penal Code [Act XLV of 1860], ss. 97, 99, 147, *Held* by Woodroffe and Mookerjee, JJ. (Rampini, J. dissenting) that, when the judgments of the Appellate Court and the Magistrate contain no finding as to what the common object of an unlawful assembly, if any, was, the conviction ought to be set aside. Where the common object stated in the charge against the petitioners was to take possession of some property by criminal force, or to enforce a right or supposed right on it, and the Appellate Court found that the opposite party had been trying to encroach upon the land decreed to the petitioners and

that the occurrence was the result of the complication, which the opposite party was trying to introduce by stealthy, wrongful acts:—*Held* by the majority of the Court that the common object alleged in the charge had not been made out, and that the accused were entitled to be acquitted. *Rahimuddi v. Asger Ali* (I. L. R. 27 Cal. 990) followed. Where the charge did not specify the property, the taking possession of which was stated to be the common object of the unlawful assembly, and its specification would have altered the whole complexion of the case:—*Held* by the majority of the Court that the omission had prejudiced the accused and was not cured by s. 537; cl. [a]: *Behari Mahton v. Queen-Empress* (I. L. R. 11 Cal. 106), *Sahir v. Queen-Empress* [I. L. R. 22 Cal. 276] and *Chunder Coomar Sen v. Queen-Empress* [3 C. W. N. 605] followed. Where the petitioners were maintained in possession of certain lands under s. 145 of the Criminal Procedure Code, including the homestead of A, and the opposite party unlawfully attempted to take possession of some huts standing thereon, whereupon the petitioners came with an armed body and demolished the huts, and on being resisted by the opposite party wounded some of them:—*Held* by the majority of the Court that they were justified in taking precautions and using such force as was necessary to prevent aggression by the opposite party. *Pachkouri v. Queen-Empress* (I. L. R. 24 Cal. 686) followed. *Ganouri Lal Das v. Queen-Empress*. [I. L. R. 16 Cal. 206] distinguished.

[33 Cal. page 646.]

[C.] **HYAM v. CORPORATION OF CALCUTTA.**

CALCUTTA MUNICIPAL ACT (BENGAL ACT III OF 1899) s. 449—Demolition—Deviation from sanctioned plan—Building in existence before sanction—Sanction not relating to such building.—Section 449 of the Calcutta Municipal Act does not give authority to the Magistrate to direct the demolition of the whole or any part of a building, which was in existence before the sanction was given, but only of a building erected in con-

fravention of the plan submitted to and sanctioned by the Corporation.

(33 Cal. page 649.)

(A.) DEO NANDAN, PERSHAD v. EMPEROR.

ACCOMPLICE—*Evidence of an accomplice*—*Compulsory payment of bribe*—*Corroboration, amount of*—*Witnesses present at the time of payment of bribe*. Where the complainant did not willingly offer the bribe, but the accused, a police officer, demanded it before taking up the charge lodged by the complainant and made use of his official position to enforce his demand. *Held*, the circumstances were such as would justify a conviction on the testimony of accomplices with a much slighter degree of corroboration than would be the case, if the accomplices were entirely voluntary accomplices. *Akhoy Kumar Chuckerbutty v. Jagat Chunder Chuckerbutty* (I. L. R. 27 Cal. 925), approved of; *Emperor v. Malhar Martland Kulkarni* (I. L. R. 26 Bom. 193), referred to. *Held*, also that those who lent money to the complainant and those who were present when money was paid to the accused could not be said to be accomplices, unless they had co-operated in the payment of the bribe or were instrumental in the negotiations for its payment. *Queen-Empress v. Deodhar Singh* (I. L. R. 27 Cal. 144) approved of; *Queen v. Chando Chandulinee* (24 W. R. 55) distinguished.

(33 Cal. page 699).

(B.) POORNA CHAND BURAL v. CORPORATION OF CALCUTTA.

CALCUTTA MUNICIPAL ACT (BENGAL ACT III OF 1899) s. 408 AND s. 574—*Notice pending litigation*. Directions given in a notice under s. 408 of the Calcutta Municipal Act (Bengal Act III of 1899) to the owners of property, during the pendency of litigation in respect of that property, cannot be said to be lawfully given, if it is not open to the owners at that time either individually or collectively to alter the property by carrying out the improvements mentioned in the notice.

[33 Cal. page 895].

(C.) MOTI THAKOOR v. DEPUTY CONSERVATOR OF FORESTS.

ASSAM FOREST REGULATION (VII OF 1891) s. 40—*Rules*—*Onus of proof*. In order to support a conviction for breach of rules 1 and 2 framed under s. 40 of the Assam Forest Regulation, the onus is on the prosecution to prove that the forest produce was being removed along some route other than the two routes prescribed by rule 1. The mere fact of its being found concealed under suspicious circumstances is not sufficient to remove that onus from the prosecution and to throw the burden on the accused of proving that it was on its way for conveyance by an authorized route.

(33 Cal. page 1023).

[D.] DADAN GAZI v. EMPEROR.

CRIMINAL PROCEDURE CODE (Act V of 1898) ss. 162, 172—*Evidence Act (I of 1872), ss. 145, 161*—*Statements of witnesses recorded by police officers*—*Police diaries*. Oral statements of witnesses to a police officer, even though entered in the diary under s. 172 of the Criminal Procedure Code, are admissible under the provisions of s. 162 of that Code, and of that section only, and the provisions as to the cross-examination of the police officer under ss. 161 and 145 of the Evidence Act, which refer to his own statements, do not apply to the statements of the witnesses. The proper procedure is for the accused, at the time the witness, whose statement is so recorded, appears before the Court, to ask the Court to refer to such writing, and if necessary, furnish the accused with copies. It is open to the defence to ask the police officer or any other person whether certain statements were made to him by the witnesses for the purpose of impeaching their credit under s. 155 of the Evidence Act, but the police officer cannot be asked to refresh his memory from diaries, which are inadmissible, unless admitted under the provisions of s. 162 of the Code and used in the cross-examination of the witnesses. It would be quite improper to accept the police officer's perfunctory

reading of his diary as proof of the statement. It is only when they have been properly brought in under the provisions of s. 162 that they can be subsequently proved by the police officer under the provisions of the Evidence Act, if the witness denies making them. But this does not authorize their use for the first time for the purpose of refreshing the police officer's memory. *In the matter of the petition of Kali Charan Chuntri*, I. L. R. 8 Cal. 154, and *In the matter of the petition of Jhubboo Mahton*, I. L. R. 8 Cal. 739, referred to.

[33 Cal. page 1032].

[A.] BALTHASAR v. EMPEROR.

EXTRADITION ACT (XV OF 1903) s. 7 AND s. 8—*Power of Magistrate to hold to bail the person arrested to appear before a tribunal in a Foreign State.* There is no provision in the Criminal Procedure Code (Act V of 1898) or in the Extradition Act (XV of 1903) authorizing a Magistrate to hold a person to bail to appear before a tribunal in a State, to which the Extradition Act applies, unless the warrant is endorsed under the provisions of s. 8 of the Act.

(33 Cal. page 1036),

[B.] SHAIK BABU v. EMPEROR.

CRIMINAL PROCEDURE CODE. (ACT V OF 1898) s. 362—*Recording of evidence by a Presidency Magistrate.* A Presidency Magistrate is bound to record evidence only in cases coming under s. 362 of the Criminal Procedure Code (Act V of 1898). He is not bound to record evidence in any summons cases or warrant cases or cases in which enquiries have to be made as in summons cases or warrant cases, except where he may impose a fine exceeding two hundred rupees or imprisonment for a term exceeding six months. It is however desirable that he should keep some record of the statements made by witnesses or that his judgment should indicate what those statements are, so that the High Court as a Court of revision may judge of the propriety or legality of the order passed by him. *Schein v. Queen-Empress*, I. L. R. 16 Cal. 199, referred to.

[33 Cal. page 1188].

[C.] KALI CHARAN GHOSE v. EMPEROR.

TRANSFER OF CRIMINAL CASE—*Criminal Procedure Code (Act V of 1898) s. 526—Reasonable apprehension in the mind of the accused—Incidents and circumstances calculated to create apprehension.* A Magistrate is bound to postpone the hearing of a case for the purpose of enabling a party to apply to a higher court for a transfer and his refusal to do so renders the subsequent proceedings voidable, if not void. *Queen Empress v. Gayatri Pranno Ghosal* I. L. R. 15 Cal. 455, *Surat Lal Chowdhry v. Emperor* I. L. R. 29 Cal. 211 and *Kishori Gir v. Ram Narayan Gir* 8 C. W. N. 77 followed. If the words used by and the actions of a judicial officer, though susceptible of explanation and traceable to a superior sense of duty, are calculated to create in the mind of the accused an apprehension that he may not have an impartial trial, the case should be transferred to to some other Judge for trial. *Dhane Kristo v. King-Emperor* I. L. R. 31 Cal. 715 and *Joharuddin v. Emperor* 8 C. W. N. 910 referred to. Confidence in the administration of justice is an essential element in good Government and a reasonable apprehension of failure of justice in the mind of the accused should be taken into consideration on an application for transfer. *Narain Chundra Banerjee v. The Howrah Municipality* 10 C. W. N. 441 explained. *Held* per Holmwood J. The case should be transferred in view of the technical objection that may be taken to the validity of the Magistrate's final decision, owing to his having refused time to apply for a transfer. The views of Brett J. as expressed in *Narain Chundra Banerjee v. The Howrah Municipality* 10 C. W. N. 441 concurred with.

[33 Cal. page 1256.]

[D.] ABDUL MAJID v. EMPEROR.

JOINT TRIAL—*Criminal Procedure Code (Act V of 1898) ss. 239 and 537—Separate retainer of stolen properties—Offences committed in the same transaction—Charge.* *Per* Harington and Stephen JJ. (*Brett J.*

dissenting). Different persons charged with separately retaining different articles of stolen properties, which are proceeds of the same theft, cannot be tried together as the offences charged cannot be said to have been committed in the same transaction. Such joint trial is illegal and is not saved by the operation of s. 537 of the Criminal Procedure Code, *Subrahmanya Ayyar v. King-Emperor* I. L. R. 25 Mad. 61; (5 C. W. N. 866) followed. *In re A. David*, 5 C. L. R. 574, and *Bishnu Banerjee v. Emperor* 1 C. W. N. 35, referred to.

✓ (33 Cal. page 1282).

(A.) DEBI BUX SRHOFF v. JUTMAL DUNGARWAL.

CRIMINAL PROCEDURE CODE (*Act V of 1898*) ss. 203 437 and 439—*Complaint, dismissal of—Presidency Magistrate—Jurisdiction of High Court to order further enquiry on the merits—Charter Act (24 and 25 Vict., c. 104) s. 15*—Where a complainant has been dismissed by a Presidency Magistrate under s. 203 of the Criminal Procedure Code, the High Court has no power to direct a further enquiry under ss. 437 and 439 of the Code, but only under s. 15 of the Charter Act (24 and 25 Vict., c. 104). The question of the propriety or the impropriety of the order of dismissal does not strictly come within the authority vested in the Court thereunder.

(33 Cal. page 1353.)

[B.] BANU SINGH v. EMPEROR

PARDON—*Power of local Government to tender conditional pardon—Withdrawal of prosecution—Accomplice's evidence—Criminal Procedure Code (Act V of 1898) s. 30 s. 494*.—A local Government in India has no power to tender a conditional pardon to an accomplice for the purpose of his being examined as a competent witness against others, accused with him. An accomplice, if he is not an accused under trial in the same case, is a competent witness and may be examined on oath; the prosecution must be withdrawn and the accused discharged under s. 494, Criminal Procedure Code before he would become a competent witness. But if the Court, purporting to act under s. 494, Criminal Procedure

Code, sanctions the withdrawal of the prosecution, but omits to record an order of discharge and the accused continues to be kept in custody, his position is in no way changed from that of an accused. The utmost caution is necessary in admitting or using the evidence of an approver. It not only requires corroboration in material particulars for its use, but its evidentiary value depends considerably upon the circumstances under which its evidence is tendered. *Reg v. Hanumantha* I. L. R. 1 Bom. 610, *Empress of India v. Ashgar Ali* I. L. R. 11 All. 260, *Queen Empress v. Mona Pona* I. L. R. 16 Bom. 661, *Empress v. Durant* I. L. R. 23 Bom. 213, *Winsor v. Queen*, L. R. 1 Q. B. 289, *Queen v. Payne* L. R. 1 C. C. R. 349, *Queen v. Behary Lal* 7 W. R. 44, *Moresh v. Moresh* 10 C. L. R. 553, *Queen-Empress v. Trebeni Sahai*, I. L. R. 20 All. 426, *Reg v. Remedios*, 3 Bom. H. C. 59, *R. v. Rudd*, Cowp. 331, and *Paban Singh v. Emperor*, 10 C. W. N. 847, referred to.

[34 Cal. page 1.]

[C.] NABU SARDAR v. EMPEROR.

CRIMINAL PROCEDURE CODE (*Act V of 1898*) s. 125—*Security to keep the peace—Power of the District Magistrate to cancel a security bond*. A District Magistrate has power under s. 125 of the Code of Criminal Procedure to direct the cancellation of a bond to keep the peace, executed on an order by a Subordinate Magistrate, on other grounds than that the bond is no longer necessary. *Banka Behary Dey v. Janmejoy Dutt* 1905 I. L. R. 32 Cal. 948, overruled.

(34 Cal. page 30).

[D.] SHAMUL DHONE DUTT v. CORPORATION OF CALCUTTA.

HIGH COURT—*Jurisdiction—Criminal Revisional Jurisdiction—Calcutta Municipal Act (Bengal Act III of 1899) s. 645 and s. 408—General Committee, power of the—Owner, determination of—By s. 645 of the Calcutta Municipal Act (Bengal Act III of 1899) the Legislature has given power to the General Committee of the Calcutta Municipal Commissioners to determine in a case, where there are gradations of owners or persons, who may be regarded*

as owners for where there is a doubt as to who is the owner bound to perform any duty imposed by the Act, which of such owners shall be deemed to be bound to perform such duty. That discretion having been by law vested in the General Committee, the High Court, in the exercise of its criminal revisional jurisdiction, has no power to set aside or question the act done in the exercise of that discretion, if those acts have otherwise been done in accordance with the provisions of the law.

✓ (34 Cal. page. 42.)

(A.) EMPEROR v. GOPAL BARIK.

JURISDICTION OF HIGH COURT—*Powers to revise orders directing prosecution—Jurisdiction of the Sessions Judge to set aside such orders—False charge—Improper order for prosecution—Criminal Procedure Code [Act V of 1898] ss. 439, 476—Indian Penal Code [Act XLV of 1860] s. 211.* A Sessions Judge has no power to set aside an order passed by a Magistrate under s. 476 of the Criminal Procedure Code. But the High Court has power to revise such orders, whether passed by Criminal or a Civil Court, under s. 439 of the Criminal Procedure Code or under its general power of superintendence, if a case for interference is made out; this power is not taken away by s. 476, cl. (2) *Queen-Empress v. Srinivasalu Naidu*, I. L. R. 21 Mad. 124 referred to. *Eranhali Athan v. King-Emperor*, I. L. R. 26 Mad. 98, dissented from. It is not in every case, which a Magistrate considers to be false, that he should direct under s. 476 of the Criminal Procedure Code a prosecution under s. 211, Penal Code. Each case must be judged by its own facts. Where, therefore, the Magistrate and the Judge came to different conclusions upon the evidence which was of a doubtful character and the complainant was a boy of 12 years of age, it was held that the Magistrate should not have directed his prosecution, and his order was accordingly set aside.

[34 Cal. page 73.]

[B.] BERCKEFELD v. EMPEROR.

NUISANCE—*Public nuisance—Indian Penal Code [Act XLV of 1860] s. 268 and s. 290.* In order to constitute an offence

under s. 268 of the Penal Code it is not necessary that the alleged nuisance should produce smells injurious to health, it is sufficient if they be offensive to the senses. *Re v. Neil* 2 C. & P. 485, approved of. To allow a large stack of bones to remain uncovered in the open for a long time so as to become rotten and to emit a smell noxious to people living in or passing by the vicinity is not an act which a bonemill manager is entitled to do in carrying on his trade in a reasonable way and by allowing such act to be done he would be guilty of committing a public nuisance.

[34 Cal page 325.]

[C.] DASARATH MANDAL v. EMPEROR.

CONVICTION—*Conviction of an offence without specific charge—Misdirections to the jury.* If the accused are charged with an offence under s. 304 or with one under s. 325, they may be convicted of an offence under s. 323 of the Penal Code, though no charge under that section has been drawn up against them. But when they are charged with those offences alleged to have been committed by another person in the course of a riot i. e., when they are charged under (s. 147) and 304 and 325 combined with s. 149 of the Penal Code and the commission of the riot is disbelieved, they should not be convicted of the offence under s. 323 in respect of their individual acts with which they are not charged and which are not imputed to them in the Judge's charge to the Jury. The omission by the Judge in his charge to the Jury to mention the fact of the original witnesses named in the first information having been abandoned by the prosecution, of two of them having given evidence for the defence and of the witnesses actually examined for the prosecution being entirely new witnesses, is a sufficient misdirection to justify the setting aside of the conviction.

[34 Cal. page 341.]

(D.) CHUNILAL DUTT v. CORPORATION OF CALCUTTA.

CALCUTTA MUNICIPAL ACT BRNAGAL ACT (Act III 1899) ss. 449, 450 452 and 579—*Discretion of Magistrate—Fine and demolition*

Limitation. The Municipal Magistrate should exercise the discretion vested in him under sections 449, 450 and 452 of the Calcutta Municipal Act (Bengal Act III of 1899) with due regard to those rules, which guide Courts of Equity in granting injunctions, with this difference that he has also to consider whether or not a building ought to be demolished on the ground of its being a danger or obstruction to the public. The Discretion is to be used after receiving evidence and hearing the defence. *Abdul Sumad v. The Corporation of Calcutta* (I. L. R. 33 Cal. 287 referred to. The fact that in respect of the same deviation from the sanctioned plan of a building, the Corporation instituted two different proceedings at different times, one under s. 579, and another under s. 449, does not deprive the Magistrate of his discretion under s. 452 of the Act. The Calcutta Municipal Act does not prescribe any period of limitation for an action under s. 449, or s. 450, but the Court should, in directing a demolition consider how far the delay in the institution of the proceedings would affect the action.

[34 Cal. page 347].

[A.] RUSSUL BIBEE v. AHMED MOOSAJEE.

CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 517—*Disposal of property by Magistrate.* Under the provisions of s. 517 of the Criminal Procedure Code (Act V of 1898) the Magistrate has power to pass an order regarding the property produced before or in custody of the Court, even though no offence has been committed in respect of it, *Surendra Nath Sarma v. Rai Mohan Das* I. L. R. 30 Cal. 690, referred to.

SUPPLEMENT.

[30 Mad. page 220.]

(B.) EMPEROR v. MAYANDI KONAN.

Madras District Municipalities Act IV of 1884, s. 188 (n)—*Not necessary to constitute offence that the cattle should have been kept for purposes of trade—No offence if cattle not habitually kept.*

An offence under section 188 (n) of Madras

Act IV of 1884 is committed when a person keeps more than 10 head of cattle in a private place, though not for purposes of trade. It is necessary, however, that there must be regular user of the place for keeping more than 10 head of cattle; and a more temporary user for such purposes will not constitute the offence.

[30 Mad. page 221.]

(C.) EMPEROR v. NAGAN CHETTY.

Madras District Municipalities Act IV of 1884, s. 222—*Section applies to lanes having no side drains or ditches.*

The obligation imposed on house-owners by section 222 of the District Municipalities Act, of not letting dirty water pass into the street is not conditional on the existence of drains made by the Municipality.

The hardship which may be inflicted on house-owners where the municipality has provided no drains is a matter to be considered in graduating the penalty.

[30 Mad. page 222.]

[D.] IN THE MATTER OF "ALRAJA NAIDU."

Defamation—*No prosecution lies for, in respect of answers given by a party to questions asked by Court.*

It is contrary to public policy that a person bound to state the truth in answer to questions put to him by a Court should be liable to be prosecuted for defamation in respect of answers so given though untrue and not given in good faith.

Manjaya v. Sesha Shetti [I. L. R. 11 Mad. 477], followed.

[30 Mad. page 224.]

[E.] MUTHIAH CHETTY v. EMPEROR

Criminal Procedure Code, Act V of 1898, ss. 215, 436—*Section 215 applies, only to a commitment actually made and not to order by Sessions Judge directing committal.*

The provisions of section 215 of the Code of Criminal Procedure apply only to a commitment actually made and not to a case where a Sessions Judge in exercise

of the powers, vested in him by section 436 of the Code, sets aside an order of discharge made by a Magistrate and directs a committal to the Sessions. In such cases the High Court may consider the facts, as well as the questions of law involved, to determine whether the Sessions Judge has exercised a proper discretion.

Pirthi Chand Lal v. Sampatia, [7 C. W. N. 327], referred to.

[30 Mad. page 226.]

ANNAYYAR v. EMPEROR.

Superintendence, powers of, of High Court—Criminal Proceedings, stay of when civil suits on same facts pending.

The defendant in a civil suit ought not to be allowed to prejudice the trial of such suit by launching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses and such proceedings if launched, will be stayed by the High Court in the exercise of its powers of superintendence.

Eudara Viranna v. The Queen [I.L.R. 3 Mad. 400], distinguished; *In re Devaji Valad Bhuvani*. [I. L. R., 18 Bom. 581,] distinguished; and [*Rajkumari Deri v. Ramasundari Debi*. [I. L. R., 23 Cal., 610], distinguished

[30 Mad. page 228.]

EMPEROR. v. MANIKKAGRAMANI.

Criminal Procedure Code—Act V of 1898, ss. 423 (1), 528—Appellate Court can itself try the offender—Cognizance in such cases under s. 190 (b) and not 190 (c). Section 423 (1) (b) of the Code of Criminal Procedure ought to be read with s. 528 of the Code.

The provisions of section 423 (1) (b) do not preclude an Appellate Court, when it reverses the finding and sentence under appeal, from trying the offender itself, if the offence is one ordinarily triable by it. In such cases, the Appellate Court takes cognizance under section 190 (b) and not section 190 (c),

[30 Mad. page 233.]

RANGASAMI GOUNDAN v. EMPEROR.

Criminal Procedure Code—Act V of 1898, s. 526—Transfer of criminal case—Magistrate having prejudged accused in another case, sufficient ground for transfer.

Where the Magistrate has, in a counter case brought by the accused on the same facts, prejudged the guilt of the accused, the High Court will, in the interests of justice, transfer the case against the accused to some other Court.

[30 Mad. page 282.]

KRISHNASWAMI THATHACHARI v. VANAMAMALAI BHASHIAKAR.

Criminal Procedure Code, Act V of 1898 ss. 110 (e), 112, 107—Enquiry under s. 107 illegal without issuing notice under s. 112.

A Magistrate before taking action under section 107 of the Code of Criminal Procedure is bound to issue the notice required by section 112 and his omission to do so is an illegality which will render the subsequent proceedings invalid,

A notice issued with reference to section 110 (e) is not sufficient as a preliminary to the Magistrate making an order under section 107.

THE END.

[7 Oudh Cases. page 163.]

[A]. DUKHARAN v. KING-EMPEROR.

Gang associated for the purpose of habitually committing theft belonging to, evidence necessary to prove offence of—Indian Penal Code, s. 401.

The accused who were convicted under s. 401 of the Indian Penal Code were all members of one family. The only evidence against them was that two of them had been previously convicted under s. 404, Indian Penal Code, that they had no ostensible means of livelihood, and that during their progress through a certain district a number of petty thefts were committed within various distances up to ten miles from their encampments.

No stolen property was traced to their possessions and it was not shown that the country through which the gang passed was free from petty crime when the gang was not about.

Held, that the evidence did not establish a charge under s. 401 of the Indian Penal Code.

[7 Oudh Cases page 208.]

[B]. SARABDAVAN SINGH v. KING EMPEROR AND ANOTHER.

Appellate Court, power of, to set aside order of Lower Court putting complainant in possession of land—Code of Criminal Procedure, s. 423 cl. (d) and s. 522—Indian Penal Code, s. 447.

The accused was convicted of an offence under s. 447 of the Indian Penal Code and sentenced to pay a fine of Rs. 51. An order was also passed at the same time under s. 522 of the Code of Criminal Procedure for putting the complainant in possession of the land in dispute and for removing certain fencings which had been erected by the accused. The Sessions Judge quashed the conviction and sentence and set aside the order under s. 522 of the Code of Criminal Procedure.

Held, that under s. 423 cl. (d) of the Code of Criminal Procedure the Sessions Judge had power to set aside the order under s. 522 of the Code of Criminal Procedure.

[7 Oudh Cases page 334.]

[C]. BIDYA DHAR v. JAGDISH PERSHAD.

Criminal Revision—Code of Criminal Procedure, ss. 435 and 439—Irregularities in proceedings—Jurisdiction of Magistrate—Code of Criminal Procedure s. 145 clauses (1) and (3).

In a Criminal case it was contended that the Magistrate divested himself of jurisdiction by not having in his order, made under section 145 (1) Criminal Procedure Code, stated the grounds for his belief that there was likely to be a breach of the peace and by not having under clause (3) of that section served a copy on the applicant. *Held*, that the matters referred to were mere irregularities in the proceedings and did not in the least affect the question of jurisdiction.

Mahesh v. Narain (L. L. R. 27 Cal. 981) dissented from.

(7 Oudh Cases page 338.)

[D]. MEGHU v. KING-EMPEROR.

Security to keep the peace after conviction on a summary trial—Imprisonment in default of furnishing security not a part of a substantive sentence—Non-appealable sentence—Criminal Procedure Code, s. 106—Assault—Indian Penal Code s. 323.

There is nothing in the law which prohibits the making of an order under s. 106 of the Code of Criminal Procedure after a conviction under s. 323, Indian Penal Code, on a summary trial, and the imprisonment to be undergone in default of furnishing security is not a part of substantive sentence. The sentence not being in itself appealable does not become so because the person convicted has been ordered to find security to keep the peace.

(8 Oudh Cases page 55.)

(A). KING-EMPEROR v. ALI
MAHOMED.

Witnesses for prosecution, refusal by Judge to examine, in the order chosen by prosecutor—Trial of Sessions cases, procedure as to—Postponement of Sessions cases—Oudh Criminal Digest, Rule 69.

Held per CHAMIER A. J. C.—It is competent to a Sessions Judge to suggest to the prosecutor that it would be convenient if a particular witness were called at an earlier or later stage of the trial; but it is not within his province to refuse to allow the prosecutor to call his witnesses in the order he chooses.

Held per WELLS A. J. C.—Sessions cases should not be tried piece-meal. Before commencing a trial, a Judge should satisfy himself that all necessary evidence is available. If it is not, he may postpone the case; but once having commenced, he should, except for some very pressing reason to be recorded by him according to Rule 69 of the Oudh Criminal Digest, proceed *de die in diem* till the trial is finished.

(8 Oudh Cases 91.)

(B). KING-EMPEROR v. MOHAN
ALIAS BHAGWAN DAS.

Criminal Procedure Code ss. 109, 110 112 and 117—Joint trial

Under s. 117 of the Code of Criminal Procedure, Act V of 1898, a Magistrate is not empowered to deal in one and the same enquiry with a person called upon to give security under s. 109, and another person called upon to give security under s. 110. These two sections of the Code deal with essentially different matters and proceedings under S. 109 and 112 against one person should not be amalgamated with proceeding under S. 110 and 112 against another person.

(8 Oudh Cases page 128.)

(C). KING-EMPEROR v. JANKI
SINGH.

Indian Penal Code Ss. 176 and 177—N. W. P. & Oudh Land Revenue Act 111 of 1901, Ss. 43 and 55, facts to be proved in order to justify a conviction order.

The zemindar of a certain village were convicted under section 176 of the Indian Penal Code for not having furnished to the patwaris, preparing the jamabandis, the particulars relating to the enhancement of rents of certain tenants. The conviction was arrived at under section 46 of N. W. P. and Oudh Land Revenue Act III of 1901, read with the above section.

Held, that in order to justify a conviction under section 46 of N. W. P. and Oudh Land Revenue Act III of 1901, read with section 176 of the Indian Penal Code, definite facts must be proved. It must be proved that a particular Patwari or Kanung asked a particular zemindar for information and that, that information was either refused or when given was false. Unless requisition to furnish information is made and the information is refused or, if furnished, is found to be false, no conviction can be sustained. It is no offence on the part of the zemindar merely to abstain from going to the patwari in order to mention to him that the rent of a tenant or tenants has been enhanced.

(8 Oudh Cases. page 245.)

(D). MAHABIR v. KING-EMPEROR.

Security for good behaviour—Order of Deputy Magistrate accepting security District Magistrate's order passed without notice to parties, Cancelling—Criminal Procedure Code, Ss. 124, 125 and 126—Criminal Revision.

The applicant was directed by a Deputy Magistrate to furnish two securities in Rs. 400 each for good behaviour. The securities were forth-coming near and were accepted by the Deputy Magistrate. Somehow the matter came before the Deputy Commissioner who on the ground that the securities were not sufficient cancelled the order of the Deputy Magistrate accepting them and ordered issue of warrants for the applicants arrest.

Held, that the order of the Deputy Commissioner was inconsistent with the spirits of section 125 read with section 124 and 126 of the Code of Criminal Procedure and was illegal. If he was dissatisfied with his subordinates security

as to the insufficiency of the security he should have held such enquiry as he thought necessary, after notice to the parties concerned, and reported the matter to the Court of the Judicial Commissioner. The law gave him no power to deal with it himself.

(8 Oudh Cases page 249.)

[A]. SRIDHAR v. KING-EMPEROR.

N. W. P. and Oudh Municipality Act I of 1900, s. 147—Building erected without sanction—second prosecution.

One B. D. built a wall without the permission of the Municipality where the house was situate. B. D. was therefore prosecuted under section 87 of Act I of 1900 (the Municipalities Act and convicted. He was sentenced to pay a fine of rs. 20 but the Magistrate trying the case did not impose a recurring fine. During the pendency of these proceedings the house was transferred by B. D. to a minor of whom S. D. the applicant was the guardian. After a termination of the above proceedings the Municipal Board again lodged a fresh notice and ordered the applicant to pull down the wall. On a disobedience of the notice the guardian was prosecuted and convicted.

Held, that in face of the previous conviction no subsequent conviction of the applicant was permissible. The Maxim of "*memo debet his vixari*" was applied.

[8 Oudh Cases page 313.]

[B]. KING-EMPEROR THROUGH SHANKARI BAKSH SINGH v. RAJA MUSTAFA ALI KHAN.

Sanction to prosecute—Criminal Procedure Code, s. 195 (c)—Indian Penal Code, Ss. 465 and 467.

One S. B. sued M. for cancellation of a mortgage-deed purporting to have been executed by S. B. in favour of M. on the ground that the document was a forgery, and had never been executed by him. S. B. filed along with his plaint a certified copy of the mortgage-deed obtained from the registration department and asked the defendant M. to produce the original. The

defendant did not appear to defend the suit, nor did he produce the original. The suit was decreed *ex parte*. S. B. subsequently instituted Criminal Proceedings against M. and others under Ss. 465 and 467, Indian Penal Code. It was objected on behalf of M. that the prosecution could not proceed as no previous sanction had been obtained under section 195 (c) of the Criminal Procedure Code.

Held that no previous sanction was necessary as the original mortgage-bond had not been "produced or given in evidence," the complainant having given only secondary evidence of the same by producing a certified copy. The "word document" in section 195 (c), Criminal Procedure Code, refers only to the original.

(8 Oudh Cases page 395.)

[C]. HARBANS v. KING-EMPEROR.

Confession made to a person not a police officer and when accused not in police custody—Confession made under inducement held out by one who is not a person in authority—Proof of so much of confession as relates to facts thereby discovered—Admission—Indian Evidence Act ss. 21, 24, 25, 26, and 27—Evidence of Magistrate to prove confession recorded by him—Criminal Procedure Code, s. 164—Murder

The appellant who was accused of Murder made a statement during the course of police investigation to certain men of influence in the neighbouring villages when no police official was present. In consequence of the accused's statement some money and other things belonging to the deceased were found at the places mentioned by him. The accused also made a statement before the Magistrate of the District. The District Magistrate refused to make the memorandum referred to in s. 164, Criminal Procedure Code, because it appeared to him that the statement was not the accused's free and spontaneous statement but was made by him in consequence of certain hopes which a constable had held out to the accused which he thought might possibly be realized. In the Court of the Committing Magistrate when the statement

made by the accused before the District Magistrate was read out to him, he stated that some constables had given him *bharg* and liquor to drink and he did not remember what he stated.

The Sessions Judge held both statements to be inadmissible, the former on the ground that the accused not having been in the custody of the police at the time when the statement was made, it was inadmissible in evidence under s. 27 of the Evidence Act, the latter on the ground that it did not contain the memorandum required under s. 164, Criminal Procedure Code.

On appeal the Court of Judicial Commissioner directed the Sessions Judge to examine the District Magistrate as to the statement made by the accused before him and to give an opportunity to the accused of explaining how he came to make it. The District Magistrate was examined and he proved that the accused appeared to be in perfect possession of his senses when he made the statement and that there was absolutely nothing to suggest that he was under the influence of any intoxicant,

Held (per Ryves, O. J. C.) that the confession of the accused made to the residents of the neighbouring villages was admissible in evidence against him. A confession made not to a police officer and not improperly obtained as laid down in s. 24 of the Evidence Act is always admissible against an accused. In the same way any fact discovered in consequence of an admissible confession can also be admitted against him.

Held (per Scott, J. C.) that having regard to the provisions of s. 21 of the Evidence Act the confessions made by the accused to the residents of the neighbouring villages and to the District Magistrate were admissible in evidence. The former confession although having been made when the accused was not in police custody, proof of it was not prohibited by ss. 25 and 26 of the Evidence Act and it was relevant under s. 24 if inducement held out to him did not proceed from "a person in authority" and the latter was admissible under s. 533, Criminal Procedure

Code, as the evidence of the District Magistrate who recorded it was taken to prove that the said statement was made voluntarily.

(8 Oudh Cases page 418).

(A) RAJA BHAGWAN BAKSH v.
KING EMPEROR.

Riot—Unlawful assembly—Indian Penal Code s. 154—Criminal Procedure Code (Act V of 1898) Ss. 190 and 556.

Held that an order to convict an accused person of an offence under S. 154 Indian Penal Code, the following facts must be established:

[1] That an unlawful assembly or riot has taken place on the land owned or occupied by the accused or in which he claims an interest; (2) that he, knowing that such an offence is being or has been committed or having reason to believe that it is likely to be committed, does not give the earliest notice thereof to the principal officer in the nearest Police station (3) in the case of his having reason to believe that it was about to be committed he does not use all lawful means in his power to prevent it and (4) in the event of its taking place he does not use all lawful means in his power to disperse or suppress the riot or unlawful assembly.

Brae v. Queen-Empress (I. L. R. 10 Cal. 338), followed; *Queen-Empress v. Payag Singh* [I. L. R. 12 All. 550]; *Kazi Zeamuddin Ahmed v. Queen-Empress* [I. L. R. 28 Cal. 504]. *Tarakant Das v. Empress* [4 C. W. 601] referred to.

(9 Oudh Cases page 29.)

[B] CHOTE v. THE MUNICIPAL
BOARD OF LUCKNOW.

N. W. P. and Oudh Municipalities Act (I of 1900) ss. 88, 147 and 152—Removal of building—Right of accused to challenge validity of order under s. 88—Notice—Retrial.

Held, that by s. 152 of the N. W. P. and Oudh Municipalities Act, an accused person is not prohibited from challenging the validity of a notice issued under s. 88 of the Act, where the Board's order is wholly *ultra vires*.

(9 Oudh Cases 49.)

[A]. NAWAB ZULFIKAR KHAN v. MUSAMMAT ZAINAB BEGAM.

Maintenance of wife, effect of subsequent Civil Court's decree declaring the parties not being husband and wife as to enforcement of order of—Code of Criminal Procedure, ss. 488 and 490.

A obtained from a Bench of Honorary Magistrates against B an order for maintenance under s. 488 of the Code of Criminal Procedure upon the allegation that she was the wife of the latter. Thereafter B obtained a declaration from the Munsif's Court that A was not his wife. B having failed to pay the maintenance as directed by the Magistrate A applied for the enforcement of the order. B put in a petition in which he recited the litigation in the Munsif's Court and contended that he was no longer bound by the Magistrate's order. The Magistrates without further enquiry into the question of marriage rejected the petition on the ground that they were not bound to take any notice of the decree of the Munsif.

Held, that when a competent Civil Court has decided that A is not and never has been the wife of B, then a Magistrate cannot in proceedings under s. 488, Civil Procedure Code, hold that A is the wife of B and order B to maintain her; *held* therefore, that the Magistrates were bound to consider the effect of the Munsif's decree which was binding on them and that under s. 490 of the Code they should have refused to enforce the order of maintenance.

(9 Oudh Cases page 69.)

[B]. BABU MURTAZA HUSAIN v. KING-EMPEROR.

Criminal Procedure Code, [1898] ss.

110 cl. [f]. 112 and 117—*Evidence of general repute, admissibility of—Desperate and dangerous character of definite facts necessary to establish charge of being—Joint trial, not prejudicing the accused, illegality of.*

Held, that where there is no evidence of habitual association beyond the fact of the two accused being master and servant, a joint trial is illegal but it need not be set aside unless it is shown that the accused was actually prejudiced or that the trial led to an improper order being passed.

Held further, that under section 110 cl. (f) 112 and 117 of the Criminal Procedure Code, evidence of mere general repute is not sufficient to prove that a person is so desperate and dangerous a character, that he cannot be allowed to remain at large, but that such a finding must be based on evidence of facts. It is not sufficient to do so on vague and general evidence that some one was robbed or beaten and people say that the accused was responsible for it.

[*Akhoykumar Chatterji v. Queen-Empress* [15 C. W. N., 249], and *Kali Halder v. Emperor* (29 I. L. R. Calc., 779 followed).

(9 Oudh Cases 357).

[C]. KHOWAJA SAHYID KAZIM HUSAIN v. MUNSHEE SHAMSUDDIN.

Malicious Prosecution, damages with respect to—False information to Magistrate—"Prosecutor," meaning of—Information leading to proceedings for taking security—Criminal Procedure Code, ss. 107 and 110.

Held, that where a person lays an information before a Magistrate that a certain person is of bad character and should be bound over to be of good behaviour, and in consequence of the in-

formation proceedings are instituted against him under s. 110 of the Code of Criminal Procedure, and the information turns out to be false, he ought to be considered to have set the law in motion against such person on a criminal charge and is liable for damages on account of malicious prosecution. It is not necessary that there should have been a prosecution of the plaintiff by the defendant for an offence described in the Indian Penal Code; if a person sets the Criminal law in motion he must be treated as a "Prosecutor," and as such liable to a claim for damages.

[30 M. L. J. 370, dissented from.]

[9 Oudh Cases page 381].

[A]. MAULVI MAQBUL AHMED v. KING-EMPEROR.

Criminal Procedure Code (Act V of 1898) section, 126—Security to keep the peace—Intention to commit a breach of the peace at the time of committing the offence essential.

Held, that before an accused can be called upon to give security under section 106, Criminal Procedure Code, it must be proved that there was an intention on his part to commit a breach of the peace at the time of committing the offence of which he has been convicted.

Jib Lal Gir v. Jagmohan Gir [I. L. R. 26 Calc., 576], *Sheo Bhajun Singh v. S. A. Mosawi* (I. L. R. 27 Calc., 983), *Baidya Nath Majumdar v. Nibaran Chunder Gope* (I. L. R., 30 Calc. 93), *Arun Samanta v. Emperor* [I. L. R. 30 Calc. 366], *Kannookaran v. Emperor* [I. L. R. 26 Mad., 469] and *Muthiah Chettia v. Emperor* (I. L. R., 29 Mad., 190), referred to.]

(10 Oudh Cases page 89.)

[B]. MOHAMMED FAZIL v. MOHAMMED ABDUL SAMAD.

Criminal Procedure Code, ss. 145 and

146—Right to collect rent from tenants, Dispute as to—Criminal Courts, jurisdiction of, to determine such dispute when the extent of the share is admitted.

Held that where there is no dispute between the parties as to the extent of their respective shares in a village, such extent having been declared by the Civil Court, or as to the fact of their being in possession, but the dispute is only as to who is entitled to collect the rent from the tenants the Criminal Courts have no jurisdiction to take proceedings under s. 145, Criminal

Procedure Code, inasmuch as a dispute about the collection of rent from the tenants is not a dispute about the rents or profits of land within the meaning of s. 145, Criminal Procedure Code.

(10 Oudh Cases page 112.)

[C]. BAWAR v. KING-EMPEROR.

Criminal Procedure Code, sections 164 342, 364 and 533—Evidence Act, section 80—Statements of the accused recorded in English and not in vernacular—Admissibility in evidence of such statements.

The Sessions Judge, who tried a Dacoity case, admitted in evidence statements in the nature of confessions recorded in English by a Joint Magistrate under the provisions of section 164, Criminal Procedure Code. There was no evidence that it was not practicable to record them in the language in which they were made and the Joint Magistrate was not examined as a witness, nor was evidence taken that the accused duly made the statements so recorded.

Held that, as it could not be presumed without some evidence that the statements had to be recorded in English as they could not be recorded in the language in which they were made, there was no justification for their being recorded in English and no presumption under section 80 of the Evidence Act could be made in respect of the record made in English.

and as no evidence was taken to prove that the accused had actually made those statements, the Sessions Judge was wrong in admitting such a record of the statements against the accused.

(10 Oudh Cases page 132.)

[A]. GOKUL v. KING EMPEROR.

General repute, evidence of—Admissibility of such evidence in cases where a person has been called on to give security for good behaviour—Criminal Procedure Code, (Act V of 1898. ss. 110 and 117 cl. (3)).

Observations upon the nature of evidence of general repute admissible in proceedings under s. 117 cl. [3] of the Code of Criminal Procedure.

Dunia Singh v. King Emperor 5 O. C. 203 approved. *Rai Ishri Pershad v. Queen-Empress* I. L. R., 23 Cal., 621 referred to.

(10 Oudh Cases page 165.)

[B]. SANT BAKSH SINGH v KING-EMPEROR.

Criminal Procedure Code s. 526—Transfer of a criminal case, grounds for, from one Court to another—Reasonable belief that no fair trial would be had to be based on facts.

Held that, in order to make out a good case for the High Court to take action under s. 526, Criminal Procedure Code, it is not sufficient for the accused to merely allege that he will not get a fair trial, but he must lay before the High Court the facts which give rise to this belief in his mind and if those facts are found such that they will reasonably give rise to this belief, a transfer ought to be made.

Dupeyron v. Driver I L. R., 23 Cal., 495 referred to.

(10 Oudh Cases page 168.)

[C]. RAGHUBER DIAL v. KING EMPEROR.

Criminal Procedure Code, s. 110—General repute, evidence of—Police officer, list of cases prepared by, inadmissible—Admissibility of evidence given by a Police officer not based on personal knowledge.

Held, that evidence of the general repute of a person includes what is generally said of him in the neighbourhood in which he lives.

Held also, that a police officer should not be permitted to depose to the result of enquiries made by him for the purpose of the case or to put in a list of cases in which the person to whom the inquiry relates is said to have been suspected by others.

Dunia Singh v. King-Emperor 5 O. C., 203 and *Gokul v. King Emperor* supra., p. 132 followed, and *Rai Ishri Pershad v. Queen Empress* I. L. R. 23 Cal. 621 referred to.

(10 Oudh Cases page 196.)

[D]. HAFIZ ALI v. KING EMPEROR

Penal Code, s. 102—Private defence, right of, when it commences.

When the applicants apprehending opposition went armed to appraise crops and on the arrival of the opposite party similarly armed did not wait till the opposite party had actually attacked but proceeded to meet them and a fight took place, *held* that the applicants had acted within the right of private defence which commenced as soon as the opposite party appeared with arms and began to move towards them which was a distinct threat to attack them and, as they had not inflicted injuries more than were necessary under the circumstances their conviction could not be sustained.

Held, further, that when a person is

attacked while doing a lawful act he is entitled to stand his ground and defend himself and that the law does not intend that he must run away to have recourse to the protection of the public authorities.

Queen-Empress v. Rupa Criminal Appeal, No. 280 of 1897, decided by High Court N. W. P. on the 27th March 1897, referred to. *Queen-Empress v. Prag Dut* I. L. R., 20 All 459 distinguished.

[10 OUDH Cases page 238].

(A) KING-EMPEROR v. B. SURAJ
BAKSH SINGH.

Penal Code, s. 176—"Official Register," meaning of—Refusing to furnish information to the Patwari regarding collections made by a zamindar—Land Revenue Act (United Provinces), ss 32, 46, and 234.

Held, that the words "official register" in s. 176 of the Indian Penal Code do not refer exclusively to the registers prescribed by section 32 of N. W. P. and Oudh Land-Revenue Act, III of 1901. A *jamabandi* prepared under rules made under s. 234 of the same Act is a register answering this description, and consequently where a zamindar refuses to give the *patwa-i* of the village information as to

the collection of rent made by him he is liable to be convicted of an offence under s. 176, Indian Penal Code.

[10 OUDH Cases page 287].

(B) BAIJ NATH v. KING-EMEROR.
Criminal Procedure Code, 1898, s. 106—Jurisdiction of a Criminal appellate court limited to that of the court of first instance—Security to keep peace, order to furnish—Invalidity of order requiring security passed by appellate court when first court had no such power to pass.

The applicant was convicted and sentenced by an Honorary Magistrate of the second class and his appeal was dismissed by the District Magistrate who, however, made an order, in appeal, requiring him to furnish security for keeping peace.

Held, that the jurisdiction of a court of appeal is limited to the jurisdiction conferred on the court of first instance and as in this case the Honorary Magistrates could not pass an order requiring the applicant to furnish security the order passed to the effect by the District Magistrate in appeal was invalid.

Muthia Chetti v. Emperor I. L. R. 29 Mad. 190 referred to

[31 Cal. page 691.]

[A.] MOHINI MOHAN CHOWDHRY
v. HARINDRA CHANDRA
CHOWDHRY.

Wrongful Restraint—Right of way, interference with—Order to remove obstruction, legality of—Indian Penal Code act (45 of 1860) section 241/114 Criminal Procedure Code act 5 of 1890 s. 522).

Held by the Full Bench, Amir Ali J. and Brett J. dissenting, that a Magistrate, while convicting an accused under section 341/114 of the Penal Code for wrongfully restraining a person by the erection of a hut or by any similar act of obstruction has no jurisdiction to order that the hut or other means of obstruction should be removed.

Debendra Chandra Chowdhury v. Mohini Mohan Chowdhry [1901] 5 C.W. 432 over-ruled.

Held further by the Full Bench, that whereas in this case criminal force has been used by the accused to the complainant when the latter objected to the obstruction, which interfered with his right of way over a path, and this constituted the offence of wrongful restraint, of which offence the accused had been convicted an order for the removal of the obstruction could be passed under s. 522 of the Criminal Procedure Code.

(31 CAL. page 783.)

[B.] JUNABALI v. EMPEROR.

Good behaviour, security for general repute—Locas penitentiae—Criminal Procedure Code (Act V of 1898) ss. 110, 118.

The petitioner was imprisoned for one year on failure to furnish security for his good behaviour under s. 110 of the Criminal Procedure Code.

About fifteen months after his release from jail fresh proceedings of the same nature were started against him and he again ordered to furnish security to be of good behaviour.

Held, that the order should be set aside, as the petitioner had not had a sufficient locas penitentiae.

[32 Cal. page 1.]

(C.) IN RE MAHARAJAH MADHAVA SINGH.

Appeal to Privy Council—Panna, Maharajah of—Order of Viceroy and Governor-General of India deposing Ruler of Native State—Report of Commissioner appointed to enquire into imputation against Native Ruler—“Court.”

No appeal lies to his Majesty the King in Council from an order of the Viceroy and Governor-General of India in Council deposing the Maharajah of the Native State of Panna, such order being an act of State.

An order was made on the report of the Commissioners appointed by the Viceroy and Governor-General of India in Council “for the purpose of inquiring into the truth of an imputation against the Maharajah that he had instigated the death of his uncle, and of reporting to the Viceroy and Governor-General in Council how far the same is true to the best of their judgment and belief.”

Held, that such a tribunal was not a ‘Court’ from which an appeal lay to His Majesty in Council.

[32 Cal page 180.]

[D.] EMPEROR v. SARADA PROSAD CHATTERJEE.

Sanction for prosecution—False charge—False information—Indian Penal Code (Act XLV of 1860), ss. 182, 211—Criminal Procedure Code (Act V of 1898) s. 195

The accused, a railway station-master, sent the following telegram to a head constable of the railway Police—“A bag of paddy was stolen from my goods shed last night. Thief was caught. Please come, prosecute him.” The head-constable inquired into the matter and reported it to be false. The Inspector of Police, in submitting the case to the District Magistrate, recommended that the station-master should be called upon to show cause why he should not

be prosecuted under s. 182 or s. 211 of the Penal Code.

A judicial inquiry, was held by a Deputy Magistrate and the District Magistrate sanctioned the prosecution of the accused. The accused was tried and convicted under s. 182 of the Penal Code, by an Assistant Magistrate with second class powers :—

Held, that the sanction given by the District Magistrate was sufficient, that a prosecution for a false charge might be under s. 182 or s. 211 of the Penal Code, but if the false charge was a serious one the proper course would be to proceed under s. 211.

Held, further, that the present case not being a serious one, it was quite legal to prosecute the accused under s. 182 of the Code.

Bhokteram v. Heera Kolita (1879) I. L. R. 5 Cal. 184, *Russick Lal Mullik In re* (1880) 7 C. L. R. 382, followed.

[32 Cal page 379.]

[M.] KALIKINKAR SEIT v. DINO-BANDHU NANDY.

Sanction for prosecution—Criminal Procedure Code (V Act of 1898) s. 195, cl. (6)—“High Court,” meaning of, in s. 195—*Extension of time—Appeal, right of—Jurisdiction.*

An appeal lies from an order which purports to extend the period of an old sanction, but in effect is an order granting a new sanction to prosecute.

“High Court” in s. 195 of the Criminal Procedure Code (Act V of 1898) does not mean a Judge sitting on the Original Side of the Court, but it means a Civil Appellate Bench of the Court; a Judge sitting on the Original Side has consequently no jurisdiction to entertain an application for extending the time during which sanction under s. 195 of the Code, is to remain in force. Such time cannot be extended after it has expired.

In re Muthukudam Pillai (1902) I. L. R. 26 Mad., 190, and *Karuppana Seiragaran v. Sinva Gounden* (1902) I. L. R. 26 Mad. 480, dissented from.

[33 CAL. page 352.]

[B.] KHOSH MAHOMED SIRKAR v. NAZIR MAHOMED.

Breach of the peace—Dis- ule concerning land—Criminal Procedure Code (Act V of 1898) s. 145—Initiatory order—Omission to state therein specific grounds for the apprehension of a likelihood of a breach of the peace—Express reference in the order to a police report containing sufficient ground for such apprehension—Sufficiency of statement of ground.

Where an initiatory order under section 145 (1) of the Criminal Procedure Code was drawn up in the following terms:—

“Whereas it appears from the police report, dated the 23rd January 1905, that there exists a dispute which is likely to cause a breach of the peace between the above-named parties for the possession of 2 Bighas and 18 cottas in three plots of land it is ordered that the said parties do attend, etc.”—and the police report set out sufficient ground for the apprehension of a likelihood of a breach of the peace:—

Held that the order was not defective because it was not self-contained and did not state in express terms the ground upon which the Magistrate was satisfied that a dispute likely to cause a breach of the peace existed, when such ground appeared in the police report on which the order was founded and to which it made reference in express terms

Goluk Chandra Pal v. Kali Charan De [1886] I. L. R. 13 Cal. 175 *Dhanpat Singh v. Chatterput Singh* (1898) I. L. R. 20 Cal. 513 approved of.

[34 Cal. page 551].

[C.] BEGU SINGH v. EMPEROR.

Criminal Procedure Code (Act V of 1898) s. 476—Order for prosecution—Power of successor in office to make order—“Court.”

The summary power conferred by s. 475 of the Criminal Procedure Code (Act V of 1898) can be exercised by the Judge who tries the case in the course of the trial of which the alleged offence is committed, and such power is exercisable only

at, or immediately after, the conclusion of the trial; an application for sanction under s. 195 of the Code can be made later on as an entirely different and independent proceeding.

To give true effect to the whole of the language of s. 476 the expression "Court" can only mean the Judge who tries the case.

Krishna Gobinda Dutt, In the matter of (1905) 9 C. W. N. 859 is rightly decided.

Per GRANT J. The terms of s. 476 indicate that the desirability of prosecuting the offender must be present to the mind of the Court during the proceedings in the course of which the offence was committed or brought to its notice. It was never intended that when the proceedings had terminated, the attention of the Court should be subsequently drawn by some private person to the fact that in these proceedings there had been committed some offence in contempt of the Court's authority or against public justice which deserved punishment. But no universal rule can be laid down that in no case can the order for a prosecution be made by an Officer other than that before whom the offence was committed.

Emperor v. Molla Fuzla Karim (1905) I.L.R. 33 Cal. 193, *Dharamdas Kamar Sayore Santra* (1906) 11 C. N. 119, referred to.

[34 Cal. page 686].

[4.] DIL GAZI v. EMPEROR.

Insanity—Unsoundness of mind—Delusion—Knowledge of the nature of the act—Penal Code (Act XLV of 1860), s. 84.

Where the accused cut his wife's throat without any rational motive, and was captured at once without any attempt on his part to escape or offer resistance, and the evidence showed that before the commission of the offence he suffered from a failure of reasoning powers, and also that he entertained delusions as to dangers which threatened his life:—

Held, that the facts proved unsoundness of mind which prevented the accused from knowing the nature of his act, and that s. 84 of the Penal Code applied.

34 CAL. page 698.

[B]. PANCHU DAS v. EMPEROR.

Jury, trial by—Misdirection—Dying declaration, admissibility of—Expression of opinion by Judge, on facts—Omission to point out material evidence—Charge, heads of—Penal Code (Act XLV of 1860) s. 325.

A dying declaration recorded in the absence of the accused, and by a Magistrate other than the inquiring Magistrate is not admissible until it is proved by the recording officer.

An expression of opinion by the Judge on the facts without telling the Jury that they are at liberty to form their own opinion in regard thereto, and also without cautioning them to give the accused the benefit of a reasonable doubt, amounts to a misdirection.

Where the medical opinion was that the injuries of the deceased were not, in the case of a man in ordinary health, dangerous to life: *Held*, that the Judge should have specially called the attention of the Jury to such opinion.

Where the accused were charged under ss. 147, 149/304 149/325, 149/323 of the Indian Penal Code: *Held*, that they could not be convicted under s. 325 of the Penal Code as they had not been called upon to meet such a charge, and it was not minor to, or included in a charge under s. 149/325 of the Code.

Ram Sarup Rai v. Emperor [1901] 6 C. W. M. 98. followed.

It is not only desirable but necessary that the charge should be recorded in an intelligible form and with sufficient fulness to satisfy the appellate Court that all points of law arising in the case were clearly and correctly explained to the Jury.

The omission to instruct the Jury as to their verdict, if they found that there was no unlawful assembly but that hurt was caused by any one or more of the accused, is a serious misdirection.

[34 Cal. page 749.]

[A.] EMPEROR v. SATISH CHANDRA ROY.

Sword-stick—"Arms," meaning of—License, necessity of—Indian Arms Act [XI of 1878] ss. 4, 13 and 19 [e].

A sword-stick is a "sword" within the meaning of the term in s. 4 of the Indian Arms Act.

Neither the length, breadth or the form of the blade of a weapon, nor the handle afford any certain test of its classification as "arms." Whatever can be used as instrument of attack or defence, for cutting as well as for thrusting, and is not an ordinary implement for domestic purposes, falls within the purview of the Act.

[34 Cal. page 840.]

[B.] KOLHA KOER v. MUNESHWAR TEWARI.

Jurisdiction—Dispute concerning land—Jurisdiction of Magistrate—Order on Written Statements without any Evidence—High Court, jurisdiction of—Criminal Procedure Code (Act V of 1898), s. 145 sub-ss. (1), (4).

Sub-section (i) is not the only provision in s. 145 of the Criminal Procedure Code, which lays down what matters relate to the jurisdiction of the Magistrate. There are other provisions in the section the contravention of which affect his jurisdiction, and so gives the High Court power to interfere.

Where the Magistrate passed an order under s. 146 of the Code, only upon the written statements of the parties and without taking any evidence:—

Held, that the order was without jurisdiction, and that the High Court had power to set it aside.

Surya Kanta Acharjee v. Hem Chunder Chowdhry (1902) 1, L. R. 30 Cal. 508, followed.

Sukh Lal Sheikh v. Tara Chand Ta (1905) 1, L. R. 33 Cal. 68, explained.

[34 Cal. page 897.]

(C.) RAM NATH CHOWDHRY v. EMPEROR.

Breach of the peace—Apprehended dan-

ger—Prohibitory order without express limitation of time—Legality of the order—Criminal Procedure Code [Act V of 1898] ss. 144 cl. [5], 555, Sch. V, Form XXI.

An order under s. 144 of the Criminal Procedure Code is not bad because it does not state that its operation is confined to two months, or some shorter period, from the making thereof. Unless there is something in the order which shows that it was intended that it should remain in force for more than two months, it must be presumed that the order is to be limited to two months as required by clause (5) of the section.

Golam Mahamad v. Bhuban Mohan Moitra (1897) 20 C. W. N. 422 *Remjit Singh v. Luchman Prosad* (1902) 7 C. W. N. 140. and *Bidhu Ranjan Mazumdar v. Ramesh Chandra Rai* (1906) 11 C. W. N. 223 discussed.

[31 Bom. page 293.]

(D.) EMPEROR v. ABDOL WADOOD AHMED.

Indian Penal Code (Act XI of 1860) section 499, Exceptions, 3, 6, 9, sections 500, 82—Defamation—Comment—Right of fair comment—Comment should be suggested by and confined to the work under review—Good faith, tests of—Malice' interpretation of the term.

The word "malice" in the legal use of that term is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind which is wrong or faulty [whether evidenced in action by excess or defect], such as would be unjustifiable in the circumstances and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment which is the subject of the complaint. For whether fair comment is to be regarded as falling under a breach of the law of privilege or not, it cannot excuse an injury arising, not from the mere act of criticism, but from a state of mind in the critic which is in itself unjustifiable and excuse may be so forfeited either by reason of an evil intent in him, or by reason of mere recklessness in making

an unwarrantable assertion. For then the comment would not be fair comment at all. Apart from extrinsic evidence of malice, protection must be withheld even from what purports to be criticism, if it states as a fact to be inferred from the book criticised, an imputation for which the book itself contains absolutely no foundation whatever.

The right of fair comment involves two essentials, first that the imputation should be comment on the work criticised and second that it should be "fair"—that is to say, that if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom.

"Good faith" requires, not logical infallibility but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment.

The object of exception 6 to section 499 of the Indian Penal Code [Act XLV of 1860] is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. Comment, otherwise defamatory, is justified on this ground alone. The comment must therefore, make it clear to the public that decision is invited only on such evidence as is supplied by the public performance. It follows that an imputation on an author made by a critic without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him apart from what appear in his work

cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein, supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him: he is also bound in the words of the exception to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but his performance submitted to his judgment.

[31 Bom. page 335.]

(4). EMPEROR v. BHAGAHN DAS KANJI.

Aden Court Act (II of 1864), sections 29, 30—Court of Resident at Aden—Suits tried by Resident as a Court of Session—Appeals heard by Resident—Application for revision against both to the High Court of Bombay—Certificate of the Advocate General—Indian Penal Code [Act XLV of 1860], section 161—"Bribe"—In the exercise of his official functions—Motive or reward—Essential of the offence.

There is nothing in section 29 or 30 of the Aden Courts Act [II of 1864] which can operate either by express words or by necessary implication, to limit the application of those sections to cases tried by the Resident as a Court of Session or to exclude appeal from their purview.

Section 30 of the Aden Courts Act [II of 1864] empowers and requires the High Court of Bombay to review the case or such part of it as may be necessary with reference only to the point of law specified in the certificate of the Advocate General. The section does not contemplate that any decision by the Resident on a point of fact should be questioned in review, save in so far as such decision may be dependent for its validity on the determination of a point of law mentioned in the certificate.

Section 161 of the Indian Penal Code

[Act XLV of 1860] requires proof that an official has obtained, as a motive or reward for official conduct, an illegal gratification for himself or another. That other may or may not be an official and therefore may be wholly unconnected with the official conduct. The conduct which is contemplated as the consideration for the bribe must be that of the official obtaining it. This is clear from the phrase, in the exercise of *his* official functions." To obtain a bribe as a motive or reward for another's conduct does not fall within the section though it may be an abetment of that offence or cheating. The performance of the act which is consideration for the bribe is not essential. But it is essential that the bribe should be obtained "as a motive or reward." That phrase evidently means on the understanding that the bribe is given in consideration of some official act or conduct. Such an understanding need not be proved by explicit evidence of any precise agreement. It may be inferred from circumstances.

[31 Bom. page 438].

(A.) **EMPEROR v. KAITAN DUM-
ING FERNAD.**

Bombay Prevention of Gambling Act (Bombay Act IV of 1887), sections 4, 5, 6, 7—Gambling—Keeping a common gambling house—Presumption under section 7 of the Act—Criminal Procedure Code (Act V of 1898), sections 65, 105.

The complainant, an Abkari Sub-Inspector, having come to know that gambling was then actually going on in the house of the accused, communicated the information to the District Magistrate, whom he met on the road. The District Magistrate desired the complainant to go and stand before the house and ordered him to enter the house and arrest the persons gambling there on sight of the District Magistrate's carriage at the spot. The complainant did so; and on a signal by the District Magistrate entered the house and arrested the accused with cards and money.

During the trial, the District Magistrate was not examined as a witness. The trying Magistrate convicted the accused for offences under the Bombay Prevention of Gambling Act [Bombay Act IV of 1887], applying to them the presumption arising under section 7 of the Act.

Held, reversing the conviction and sentence, that the Magistrate erred in applying to the accused the presumption arising under section 7 of the Act.

The presumption under section 7 of the Bombay Prevention of Gambling Act [Bombay Act IV of 1887] arises only where there has been an arrest and a search under section 6 of the Act.

As a first Class Magistrate has, under section 6 of the Act, power to give authority under a special warrant to a police officer of the class designated in the section to make the arrest and search the Legislature must be presumed to have intended that the Magistrate, First Class, should have the authority to make the arrest and the search himself, if necessary.

Where the Bombay Prevention of Gambling Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail and the Criminal Procedure Code must give way. Accordingly, no provision of the Code as to the authority empowered to issue a warrant for arrest or search, or the person to whom and the conditions under which such warrant may be issued can apply for the purposes of section 7 of the Act. The authority, the persons and the conditions must be respectively those specifically mentioned in section 6 of the Act and no other. But the special provision in section 6 would still be subject to the general provisions of sections 65 and 105 of the Code.

When a Magistrate, First Class, or other officer mentioned in section 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) himself acts under its provisions, instead of acting through an officer of the particular class prescribed therein under a special warrant, he must act strictly in accordance

pliance with those provisions. The first condition necessary to make an arrest and seizure under the section 1-gal so as to bring in the operation of section 7 is that where the Magistrate is acting on information there must be a complaint made before him on oath to set him in motion. When a Magistrate, First Class, or other officer mentioned in section 6 himself does the Acts specified in clause (1) to (3) of the section instead of issuing special warrant, he must give evidence, because he supplies the place of the warrant and the warrant is a necessary part of the evidence for the prosecution.

Where a Magistrate, First Class, himself makes an arrest and seizure under section 6 of the Bombay Prevention of Gambling Act [Bombay Act IV of 1887] he must himself "enter" the "house room or place," with the assistance of such persons as may be found necessary.

Section 6 of the Bombay Prevention of Gambling Act [Bombay Act IV of 1887] must be construed strictly because section 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases.

Imperatrix v. Lubhakhatta [1895] Unrep. Br. C. 825 ; Cr. R. 68 of 1895, followed.

(26 ALL. page 194.)

(A). EMPEROR v. JANGI SINGH.

Act No. 45 of 1860 s. 441—Criminal trespass—Intent—Dispossession of tenant under a false patent

When a zamindar under a pretext that one of his tenant had left the village and abandoned his holding took possession of the tenant's holding wrongfully—it was held that, in the absence of evidence of one of the subjects specified in section 441 of the Indian Penal Code, the zamindar could not properly be convicted of criminal trespass, his intention apparently being merely to get possession of the land.

King Emperor v. Nandan Weekly notes 1902 p. 42 distinguished.

[26 ALL. page 244.]

(B.) HARDEO SINGH v. HANOMAN DUT NARAIN.

Criminal Procedure Code, sections 195 439—Sanction to prosecute—Revision—Appeal—Act No. XLV of 1860 [Indian Penal Code] section 211.

Held that an application made under clause (6) s. 105 of the Code of Criminal Procedure may probably be regarded as an application by way of an appeal, though it is not material by what name the application is called in pursuance of which the appellate court revokes (all grants). A sanction granted (or refused) by a Subordinate Court.

Mehdi Hasan v. Tota Ram I. L. R. 15 All. 61 discussed.

Held also that to constitute the offence provided for by section 211 of the Indian Penal Code it is sufficient that a false complaint should be made against a person. It is not necessary that summons should be issued upon such complaint.

(26 ALL. page 249)

(C). IN THE MATTER OF THE PETITION OF BHUP KUNWAR.

Criminal Procedure Code, section 439 476—High Courts power of revision—Order passed by a Munsiff directing the prosecution of a party to a civil suit.

Where a Munsiff acting under s. 476 of the Code of Criminal Procedure directed the prosecution of a party to a civil suit pending before him,

It was held by Stanley C. J. and Blair J., that the High Court had no jurisdiction in the exercise of its revisional powers on the Criminal side under s. 439 of the Code of Criminal Procedure to interfere with such order. A *Krin Holi Athan v. King-Emperor* [1902] I. L. R. 26 Mad. 98. *Kali Pershad Chatterji v. Bhuvan Mohini Dasi* [1903] 8 C. W. N. 73 and *Emperor v. Mohamed Khan* Weekly Notes (1902) p. 202 referred to.

Per BANERJEE J., CONTRA—The High Court has power under s. 439 of the

Code of Criminal Procedure to revise an order made under s. 476 of the Code, whether such order be made by a Civil, Criminal or Revenue Court. *Emperor v. Mohamed Khan Weekly Notes* 1902 p.202 *In the matter of petition of Mathura Das* [1892] I. L. R. 16 All. 30. *In the matter of the petitioner of Alamdar Husain* 2901 I. L. R. 23 All. 249 *Khepu Nath Sikdar v. Grish Chander Mutterjee* [1889] I. L. R. 16 Cal. 130 *Choudhary Mohamed Ishorulhay v. Queen Empress* (1899) I. L. R. 20 Cal. 349 *Queen Empress v. Srinivasa Niadee* (1897) I. L. R. 21 Mad. 124 *Queen-Empress v. Raechapa* (1888) I. L. R. 18 Bom. 109. *In re Bal Gangadhar Tilak* I. L. R. 26 Bom. 785 *Erani Holi Mathan v. King-Emperor* (1932) I. L. R. 26 Mad. 28 and *Kali Pershad Chatterjee v. Bhuvan Mohini Dasi* [1903] 8 C. W. N. 73 referred to.

[27 All. page 11.]

(A). BUDHNI v. DABAL.

Criminal Procedure Code, sections 488 and 489—Maintenance of child—Power to cancel an order for maintenance.

Held that where an order has once been passed by a competent Court under section 488 for the payment of maintenance for a child, the only power that exists of modifying such an order is that given by section 489 of the Code.

[27 All. page 28.]

[B]. EMPEROR v. MAULA BAKHS.

Act No. XLV of 1860 (Indian Penal Code), section 405—Criminal breach of trust—"Property"—Cancelled cheques.

Held that a cancelled cheque falls within the meaning of the term "property" as used in section 405 of the Indian Penal Code, even if it is worth no more than the value of the paper upon which it is written. *In the matter of a conviction for criminal breach of trust the question of the value of the property in respect of which the breach of trust is committed is, except so far as section 405 of the Code is concerned, quite immaterial.*

[27 All. page 69.]

(C). EMPEROR v. ISHTIAQ AHMAD.

Act XLV of 1860 (Indian Penal Code) section 409—Criminal breach of trust—Form of charge—Criminal Procedure Code, section 234.

In a charge of criminal misappropriation there were three counts. Each count specified the sum of money alleged to have been misappropriated by the accused on a particular day; but in two out of the three cases the total sum consisted of three separate items in each instance. Held that a charge so framed did not offend against section 234 of the Code of Criminal Procedure. *King-Emperor v. Galzari Lal* (1902) I. L. R. 24 All. 234, followed.

[27 All. page 92.]

(D.) EMPEROR v. KALLU.

Review—Powers of High Court in criminal cases—Finality of order of High Court—Order not sealed—Criminal Procedure Code, sections 107 and 110—Security for keeping the peace—Security for good behaviour.

An application from jail—worded as an appeal—against an order passed under sections 110 and 118 of the Code of Criminal Procedure was summarily rejected by means of the following order:—"No appeal lies in this case, and no sufficient ground appears for interference in revision. The application is dismissed." This order was signed by the Judge who passed it, but was not sealed with the seal of the Court.

Held that the Judge who had passed the order quoted above was not under the circumstances precluded from entertaining an application for revision presented by counsel in relation to the same matter. *Queen-Empress v. Lalit Tewari* (1899) I. L. R. 21 All. 177, followed.

Held also that where it appears from the evidence that there is an apprehension of anyone using violence towards a particular person or particular persons he ought to be bound over to keep the peace as provided by section 107, and not be proceeded against under section 110 of the Code of Criminal Procedure.

INDEX.

THE FIRST IS THE INDEX OF THE LAW REPORTS AND THE
SECOND AFTER DASH-IS THAT OF THIS BOOK.

ABANDONMENT.

18 ALL. 364-364 C:—The Mother who left her illegitimate infant in charge of a blind woman and returned but was not convicted.

ABETMENT.

20 BOM. 394-359 A:—A policeman who stood by and acquiesced in an assault on a prisoner committed by another policeman was convicted.

31 CAL. 419-303 B:—See.

30 CAL. 905-500 D:—See.

26 MAD. 463-487 B:—The woman enticed was not an abettor of enticing away a woman.

28 CAL. 797-443 C:—What amounts to the evidence of abetment of conspiracy.

26 ALL. 197-519 A:—See

ABSCONDING OFFENDER.

(Attachment of Property.)

28 MAD. 88-357B:—When a claim is made to property attached under Section 88 Criminal Procedure Code, and the Magistrate errs, the remedy is by a Civil Suit and not criminal revision.

22 ALL. 218-460 A:—Sale of property after irregular proclamation held valid.

ACCOMPLICE.

24 CAL. 492-375 A:—The sanction to prosecute an approver should be obtained from the High Court by motion.

23 BOM. 493-168 C:—Action can be taken against an approver after the case is finished by the Sessions Court.

27 CAL. 144-421 B:—A witness of bribe-giving was not convicted.

ACCOMPLICE.—(Cont'd.)

28 CAL. 339-438 D:—Corroboration of evidence given by accomplice is ordinarily necessary.

27 CAL. 925-432 C:—Lender of money to be extorted, not guilty.

26 BOM. 193-476 A:—It is unsafe to convict on the uncorroborated evidence of accomplice.

30 BOM. 611—552A:—See.

33 CAL. 649—571 A:—Amount of corroboration.

33 CAL. 1353—573B:—Pardon.

ACCUSED PERSON.

(General.)

23 CAL. 493-373 B:—The accused means one over whom a Magistrate or other Court exercises jurisdiction.

29 CAL. 481-449 D:—Offence triable as warrant case.

6 O. C. 204-516 B:—(Conviction resting upon confession of a co-accused.

21 ALL. 107-456C:—A person against whom proceedings under Chapter VII. Criminal Procedure Code is taken, is one.

28 CAL. 397-439 D:—Improper discharge of.

32 CAL. 550-561E:—See.

32 CAL. 1090-566 B:—See.

28 ALL. 331-529 C:—See.

29 MAD 187-540 C:—See.

ACCUSED PERSON.

(Right of.)

20 MAD. 189-357 C:—Not entitled to copies of Police reports before trial.

28 CAL. 594-442B:—The accused can get an adjournment to cross-examine

ACCUSED PERSON.—(Contd.)

the prosecution-witnesses.

19 ALL. 390-367F:—Not entitled to see special diaries.

30 MAD. 134-544C:—See.

ACQUITTAL.

20 ALL. 459-398 C:—Appeal by Government against acquittal is on the same footing as that from conviction.

1 O. C. 85-505:—Acquittal without taking the whole evidence tendered by the prosecution is invalid and a retrial can be ordered.

25 BOM. 422-473C:—Persons discharged were competent witnesses.

27 ALL. 359-525F:—See.

ACTS.**CHARTER ACT.**

(24 & 25 Vic. Chap. 104.)

Section 15.

26 CAL. 188-415 E:—The Local Legislature cannot overrule a statutory power conferred on the High Court.

Section 15.

26 CAL. 852-418D:—The High Court has authority under the Charter Act, (not under the Criminal Procedure Code), to interfere with an order made by a Subordinate Court granting or refusing sanction to prosecute.

27 CAL. 126-419D:—The High Court can revise an order of discharge passed by a Presidency Magistrate.

27 CAL. 892-431 A:—The High Court can interfere when a succeeding Magistrate revises and alters the character of the proceedings of his predecessor adding parties to proceedings.

28 CAL. 416-440B:—The High Court only can interfere with the proceedings of a Magistrate under Chap. XII, Criminal Procedure Code.

28 CAL. 709-443B:—The High Court can transfer a case under Section 145, Criminal Procedure Code.

29 CAL. 382-446B:—The High Court will not interfere with an order relating to the management of property under attachment.

26 ALL. 144-497D:—The High Court

CHARTER ACT.—(Contd.)

cannot interfere with an order passed by a Court having jurisdiction under Chap XII, Criminal Procedure Code.

ACTS (GENERAL.)**ACT XI OF 1846.**

25 BOM. 667-474B:—See.

28 MAD. 37-536B:—See.

ACT XIII OF 1859.

(*Criminal Breach of Contract*)

Section 1.

27 CAL. 131-420A:—Breach of contract by workmen—Trial—Procedure.

20 MAD. 235-357D:—Warrant issued—Execution outside jurisdiction.

24 MAD. 660-413A:—Failure to comply with order of Court.

20 ALL. 124-370C:—Warrant.

25 CAL. 637-387B:—Jurisdiction of Presidency Magistrate—Magistrate of Police.

Section 2.

23 MAD. 203-403C:—Money advanced on account of work to be performed—Loan on condition that the workman should enter into a contract of service.

Section 4.

25 CAL. 637-387B:—Jurisdiction of Presidency Magistrate—Magistrate of Police.

ACT XLV of 1860.

(*See Penal Code.*)

ACT V of 1861.

(*Police Act.*)

S. 4 (2.)

27 ALL. 292-522E:—See.

Section 34.

27 CAL. 655-427 D:—Cow slaughter in open veranda.

ACT II OF 1864.

(*Aden Courts Act.*)

Section 17.

29 BOM. 575-549 B:—Transfer of case.

Section 29, 30.

31 BOM. 335-589 A:—See.

ACTS GENERAL—(Contd.)

ACT III of 1867.

*(Gambling Act.)**Section 6.*

19 ALL. 311-367E:—Evidence of house being a common gaming house—Instrument of gaming.

5 O. C. 37-509 C:—Common gambling house—Presumption as to.

ACT VII OF 1870.

*(Court Fees Act.)**Section 31.*

22 MAD. 153-401C:—See.

24 MAD. 319-411B:—Sale by thief of Stamp—Offence.

30 CAL. 921-501C:—Transfer of stamp on promise that, one of equal value would be returned.

ACT I of 1871.

*(Cattle Trespass Act.)**Section 11.*

22 Bom. 933-346A:—Cattle straying in reserved Forest—Seizure by a forest officer of such cattle.

Section 20.

18 ALL. 353-364A:—Complaint of Wrongful seizure of cattle—Offence.

23 CAL. 442-373A:—District Magistrate to transfer cases to a subordinate Magistrate.

Section 22.

19 MAD. 238-353B:—No appeal.

Sections 22, 20.

29 MAD. 517-542 A:—Appeal lies against order under.

Section 24.

24 MAD. 318-411 A:—Rescue of cattle after seizure for trespassing on public property.

Section 25.

19 MAD. 238-353B:—No appeal.

ACT IV OF 1871.

*(Coroner's Act.)**Sections 24, 25, 26, 27 & 29*

31 CAL. 1-502B:—Inquisition by the coroner.

ACTS GENERAL—(Contd.)

ACT I OF 1872.

*(Indian Evidence Act.)**Section 8.*

5 O. C. 246-512 C:—Evidence of deaf and mute—signs made by, how far admissible in evidence.

Section 10.

18 CAL. 797-443 C:—Abetment of conspiracy, what amounts to—Evidence of.

Section 14.

27 CAL. 139-421A:—Evidence of bad character.

Section 24.

25 BOM. 168-473A:—Retracted confession.

26 MAD. 38-481B:—Confession caused by promise.

25 BOM. 543-473 D:—Confession of an accused, while in custody of the police.

8 O. C. 395-579 C:—See.

Section. 25

26 CAL. 569-416E:—Confession to Police-officer.

Section 26.

20 BOM. 795-359 G:—Confession to a Jailor in a Native state is evidence.

Section 27

25 CAL. 413-383C:—Statement leading to the discovery of a fact.

Section 30.

22 BOM. 235-362B:—Confession made to a Magistrate of a Native state is admissible.

22 ALL 445-460F:—See.

29 ALL. 434-594 B:—See.

22 MAD. 491-402B:—Confession of co-accused.

23 MAD. 151-402C:—Confession by one of several persons jointly tried for the same offence.

23 ALL. 53-461A:—Joint trial—Plea of guilty by some of the accused.

19 MAD. 482-355 C:—Confession of accused, corroboration.

Section 32.

5 O.C. 246-512C:—Evidence of deaf and mute, signs made by, how far admissible in evidence.

ACTS GENERAL—(Contd.).

ACT I OF 1872—(Contd.)

Section 33.

25 BOM. 168-173A:—Retracted confession.

23 CAL. 441-372E:—Deceased witness—Deposition of.

Section 35.

28 CAL. 348-439B:—Intentionally giving false evidence—Proof necessary for each statement.

Section 39.

19 ALL. 390-367F:—Right of the accused or his agent to see the special diary.

Section 54.

28 BOM 129-504B:—See.

27 CAL. 137 421A:—Evidence of bad character.

Sections 74 & 76.

20 MAD. 189-357C:—Right of an accused to inspect and have copies of charge-sheet.

Section 91.

28 CAL. 689-443A:—Accused—Examination of in respect of previous convictions.

Section 105.

21 ALL. 122-457 A:—See.

S. 111.

29 ALL. 138-522F:—See.

Section 114.

25 MAD. 143-414A:—Evidence of accomplice and corroboration.

28 CAL. 339-438D:—Accomplice by implication or in a secondary sense.

Section 114 ill [b.]

22. MAD. 491-402B—Confession of co-accused.

26 BOM. 193- 476A:—Evidence, corroboration, bribery.

27 MAD. 271-533D:—See.

Section 118.

23 ALL. 90-462A:—Competency of witness of tender years.

5 O. C. 246-512C:—Evidence of deaf and mute, signs made by, how inadmissible in evidence.

Section 119.

5 O. C. 246-512C:—See above.

Section 122.

22 MAD. 1-400B:—Letter from husband to wife found in the wife's house.

Section 132.

23 BOM. 213-466D:—Accused persons

ACTS GENERAL—(Contd.).

ACT I OF 1872.—(Contd.).

calling as witnesses persons charged awaiting a separate trial for same offence.

3 O.C. 80-506C:—Evidence—Privileged statement.

Section 133.

25 MAD. 143-414A:—Evidence of accomplice.

28 CAL. 339-438D:—Accomplice by implication or in a secondary sense.

26 BOM. 193-476A:—Evidence,—Corroboration,—Bribery.

Section 145.

19 ALL. 390-367F:—Right of the accused or his agent to see the special diary.

Section 145, 161.

33 CAL. 1023-571 D:—See.

Section 154.

28 CAL. 594-442B:—See.

Section 155 [3.]

26 MAD. 191-485D:—Inadmissibility as substantive evidence of statements previously made.

Section 161.

19 ALL. 390-367F:—Right of the accused to see the special diary

Section 165.

24 CAL. 288-377B:—A party to a proceeding can cross-examine any witness summoned by the Court.

ACT XV OF 1872.

(*Indian Christian Marriage Act.*)

Sections 5, 10, 12, 13, 38, 68,
70 & 73.

19 MAD. 273-353G:—Licensed Minister to solemnise marriages.

Section 68.

20 MAD. 12-356E:—To solemnise is equivalent to conduct, celebrate or perform.

ACT X OF 1873.

(*Oaths Act.*)

S. 4, 5.

29 MAD. 89-538A:—See.

ACT XIV OF 1874.

(*Schedule Districts Act.*)

Section 6.

26 CAL. 874-419C:—Power of the Supreme Council.

ACTS GENERAL—(Contd.)

ACT XIV OF 1874—Con'd.

25 BOM. 667-474B:—Jurisdiction of High Court.

ACT V OF 1876.

Section 2 & 7.

25 CAL. 333-383B:—Does not apply to an act committed after the repeal of the Law.

ACT III OF 1877.

(Registration Act.)

Sections 74 & 82.

24 CAL. 755-380D:—Liability of witness in an enquiry by Sub-Registrar.

30 CAL. 822-500C:—See.

Section 81.

6 O. C. 153-515B:—False certificate by Registrar.

ACT XV OF 1877.

(Limitation Act.)

Sch. 11, Art 47.

20 ALL. 120-370B:—Does not apply to a suit by one complainant against another to recover property attached by Magistrate.

ACT I OF 1878.

(Opium Act.)

Section 9.

19 ALL. 465-368A:—See.

24 CAL. 691-380 C:—Liability of Police officer for wrongful entrance and illegal search.

Sections 5 & 9.

26 CAL. 571-416F:—Liability of vendor for keeping incorrect accounts.

25 ALL. 262-496A:—Possession of illicit opium.

6. O. C. 99-505D:—Unlawful possession by member of a joint family.

32 CAL. 557-562A:—Potential possession—guilty knowledge.

[ACT VII OF 1878].

(Forests Act.).

Section 25 & 52.

27 CAL. 450-425 A:—Conviction for offence—Subsequent order for confiscation.

ACTS GENERAL—(Contd.)

ACT VII OF 1878—Con'd.

Section 69.

22 BOM. 933-396 A:—Cattle straying in a reserved forest—Seizure by a Forest Officer.

Section 78.

22 BOM. 769-395 A:—Refusal to serve as member of a Punch.

ACT XI OF 1878.

[Indian Arms Act.]

Ss. 4, 13, 19.

34 CAL. 749-588A:—“Arms,” meaning of—license, necessity of.

Sections 19 & 27.

22 ALL. 118-459 D:—Arms carried and used by servant of exempted persons.

28 ALL. 302-528 E:—Mere denial of possession is not concealment.

Section 19 (f).

22 ALL. 323-460 D:—Volunteers.

Section 19.

24 ALL. 454-465 E:—Going armed.

24 BOM. 293-471 A:—Master's liability for servant's act.

Sections 29 & 30.

27 CAL. 692-42 A:—Possession or control over—Search—Legality of.

ACT I OF 1879.

(Stamp Act.)

Section 3 (13).

27 CAL. 587-427 B:—Mortgage, definition of for purposes of Stamp duty—Assignment by way of mortgage of valuable security to secure pre-existing debt—Stamp duty payable thereon.

Section 3 (17).

23 BOM. 54-397 F:—See.

Section 58.

27 CAL. 324-423 C:—Signing otherwise than as a witness —“Meaning of” —Liability of Agent authorized to sign on behalf of principal—Granting of unstamped receipt.

Section 61.

23 MAD. 155-402 D:—Defrauding Government of Stamp-revenue by a contrivance or device not otherwise specially provided for—Receipt of unstamped document—Abetment of an offence.

27 CAL. 324-423 C:—See.

ACTS GENERAL—(Contd.)

ACT I OF 1879.—Contd.

20 ALL. 410-398 B :—Stamp—Promissory Note—Person receiving an understamped promissory note not liable under Section 61.

Sec. 61, sch. I art. 29 cl. (b) & art. 44.

27 CAL. 587-427 B :—Mortgage—Definition of for purpose of stamp duty—Assignment by way of mortgage of valuable security to secure pre-existing debt—stamp duty payable thereon.

Section 64.

27 CAL. 324-423 C :—“Signing otherwise than as a witness”—Meaning of—Liability of Agent authorized to sign on behalf of principal—Granting of unstamped receipt.

Section 67.

23 MAD. 155-402 D :—See.

ACT XVIII 1879.

(Legal Practitioners Act.)

Sections 6 & 8.

24 ALL. 348-465 C :—Jurisdiction of the High Court as regards enrolment of pleaders in the provinces of Kumaon and Gurwal.

ACT XXI OF 1879.

[Extradition Act].

Sections 4 & 6.

26 MAD. 607-490 C :—Jurisdiction of Magistrate in Mysore to try and convict an European British Subject for an act amounting to an offence under the Mysore law but not an offence under the Indian Penal Code.

Sections 1, 11, 12, & 18.

5 Q. C. 55-510 B :—Extradition of offenders—Criminal breach of trust committed in a Native State.

ACT V OF 1881.

(Police Act.)

Section 17 & 19.

28 CAL. 411-440 A :—Public servant

ACTS GENERAL—(Contd.)

ACT V OF 1881—Contd.

—Obstructing him from discharge of his duty—Riot.

Section 29.

22 ALL. 340-460 E :—Trial by District Magistrate for breach of orders of a Revenue Inspector of Police.

Section 34.

27 CAL. 655-427 D :—Annoyance to residents of locality—Open place.

ACT XV OF 1881.

[Factories Act.]

Sections 15 (g) & 17.

25 CAL. 454-385 B :—Liability for neglecting to keep a factory in a cleanly state.

Sections 12, 15.

29 BOM. 425-548 C :—See.

ACT XVII OF 1881.

(Excise Act.)

Sections 27, 28, 29, 30, 34 & 47.

20 ALL. 70-369 D :—Excise-officer—Jurisdiction.

ACT IV OF 1889.

(Merchandise Marks Act.)

26 BOM. 289-476 B :—Trade-mark—Trade description—Title of a book—Unauthorized publication.

Section 3.

27 CAL. 776-429 B :—See.

Sections 6, & 7.

31 CAL. 411-503 A :—Trade-Mark—Selling goods marked with a counterfeit trade-mark.

Section 15.

22 MAD. 488-402 A :—Use of counterfeit trade mark—Prosecution after one year from first discovery of offence—Limitation.

28 CAL. 232-416 A :—Selling books with counterfeit Property mark—Goods

ACTS GENERAL—[Contd].

ACT IX OF 1890.

(Indian Railway Act.)

Section 10.

32 CAL. 73-558 C:—Railway collision.

Section 110.

24 BOM. 293-471A:—"Compartment"—meaning of the word.

Section 113.

20 MAD. 385-357H:—Excess charge and fare recoverable as a fine.

20 ALL. 95-369E:—Travelling without a proper ticket—Punishment.

Section 122.

22 BOM. 525-391D:—Right of entry.

Section 128

29 CAL. 385-446C:—Offences not committed in the same transaction.

Section 132.

20 ALL. 95-369E:—Travelling on a Railway without a proper ticket—punishment.

ACT I OF 1891.

[Cattle Tresspass Act.]

Section 22.

27 CAL. 992-434B:—Illegal seizure of Cattle—Fine—Compensation.

ACT I OF 1894.

(Land Acquisition Act.)

Section 53.

27 CAL. 820-430C:—Power of Collector under the Act to administer oath or require verification.

ACT III OF 1895.

(Whipping Act)

Section 4.

25 BOM. 712-475 C:—Whipping—Dacoity.

(ACT VIII OF 1895).

(Police Act.)

Section 13.

27 CAL. 655-427D:—Annoyance to residents of Locality—Open place.

ACTS GENERAL—[Contd].

ACT VIII OF 1897.

(Reformatory Schools Act)

Section 1 cl (2) (3) & (8.)

25 CAL. 333-383B:—Effect of the repeal of a repealing statute.

Section 4.

20 ALL. 158-371A:—Order for detention in a Reformatory School

Section 8.

20 ALL. 158-371A:—The High Court cannot interfere with an order for detention in a reformatory School in substitution for transportation or imprisonment.

20 ALL. 159-371B:—Order for detention in a Reformatory School.

20 ALL. 160-371 C:—Order for detention in a Reformatory School—Powers of High Court.

21 MAD. 430-391A:—Periods of detention in the Reformatory.

24 MAD. 13-406 D:—Periods of detention allowable—Finding by Magistrate as to age.

27 CAL. 133-420B:—Youthful offender—Evidence of age.

28 CAL. 423-440C:—Detention in lieu of sentence of imprisonment.

Section 8 cl. (3).

21 ALL. 391-458C:—Order for sending a boy of the Dalera caste to a Reformatory School.

Section 9.

24 MAD. 13-406D:—Periods of detention allowable—Finding by Magistrate as to age.

Section 11.

24 MAD. 13-406D:—Periods of detention allowable—Finding by Magistrate as to age.

27 CAL. 133-420:—Youthful offender—Evidence of age.

Section 13.

24 MAD. 13-406D:—Periods of deten-

ACTS GENERAL—(Contd.)

ACT VIII OF 1897—[Contd].

tion allowable—Finding by Magistrate as to age.

Section 16.

24 MAD. 13-406D:—Periods of detention allowable—Finding by Magistrate as to age.

27 CAL. 133-420B:—Youthful offender—Evidence of age.

28 CAL. 423-440C:—Detention in lieu of sentence of imprisonment.

21 ALL. 391-458C:—Jurisdiction of High Court to interfere with orders.

20 ALL. 158-371A:—Order for detention in a Reformatory School.

20 ALL. 159-371B:—Order for detention in a Reformatory School.

20 ALL. 160-371C:—Order for detention in a Reformatory School.

Section 31.

27 CAL. 133-420B:—Youthful offender—Evidence of age.

ACT X OF 1897.

(General Clauses Act.)

Section. 3. (59).

32 CAL. 550-551E:—See.

ACT V OF 1898.

(See Criminal Procedure Code.)

ACT VI OF 1898.

(Post Office Act.)

S. 20, 61.

32 CAL. 547-560A:—See.

Section 59.

28 CAL. 211-436D:—Rearrest of accused without previous order of discharge being set aside.

29 CAL. 412-448B:—Retrial and commitment of accused.

ACT II OF 1899.

(Stamp Act.)

Section 33.

25 MAD. 525-414C:—Seizure of documents under search-warrant—Document that comes before a Magistrate.

ACTS GENERAL—(Contd.)

ACT II OF 1899—[Contd].

Section 62.

4. O. C. 168-508 C:—"Accepting"—meaning of—Promissory note receiving unstamped.

Section 69.

24 MAD. 319-411B:—Sale by thief of stolen stamps—Offence.

ACT XV OF 1903.

(Extradition Act.)

S. 7, 8.

33 CAL. 1032-572 A:—Power of Magistrate to hold to bail the person arrested to appear before a tribunal in a foreign state.

ACTS. (Local)—Bengal.

ACT XXII OF 1860.

(Chittagong Act.)

Section 1.

27 CAL. 654-427C:—Jurisdiction of High Court to hear appeals from convictions of offences committed within the Chittagong Hill tracts.

ACT II OF 1867.

(Gambling Act, Bengal.)

Section 6.

25 CAL. 432-384D:—Common gaming house—Cowries—Instrument of gaming.

ACT VI OF 1870.

(Village Chowkidari Act.)

Section 8.

23 CAL. 421-372D:—Order imposing fine by Sub-divisional Officer—Judicial Order—Revision by the High Court.

ACT VII OF 1876.

(Land Registration Act.)

Section 56.

29 CAL. 236-445A:—Public servant, Receiver appointed under Land Registration Act, whether a Non-attendance in obedience to an order from public servant.

[ACTS LOCAL—(Bengal)—Contd.]

ACT VII OF 1878.

(Bengal Excise Act.)

Section 53.

29 CAL. 496-451B:—Ganja—Sale of, without License by servant in presence of master.

Section 59.

29 CAL. 606-451C:—Commission by servant of Licensed manufacturer or vendor of act in breach of conditions of License.

24 CAL. 324 377E:—"Foreign Exoisable article"—Right of search.

ACT VIII OF 1878 & IV OF 1881.

(Bengal Excise Amendment Act)

Section 3.

24 CAL. 324-377E:—"Foreign Exoisable article"—Right of search.

ACT III OF 1884.

(Bengal Municipal Act.)

Sections 155 & 156.

27 CAL. 317-423A:—"Ferry" meaning of—Boat plying for hire without license within prescribed limit of Ferry.

Sections 175, 235, 236, 237, 238, & 278.

29 CAL. 491-450C:—Commencement of second story to house—Eheroachment—where permission from Municipality necessary.

Sections 237.

25 CAL. 419-384A:—Notice of intention to build—Commencing to build before sanction—Liability to fine.

Sections 320 & 321.

25 CAL. 454-385B—Liability for neglecting to keep a factory in cleanly state.

ACT II OF 1888.

(Calcutta Municipal Consolidation Act.)

Sections 87 sch. II rule 7 cl. (6)

23 CAL. 483-385C:—Liability to tax of company carrying on business through

ACTS LOCAL (Bengal)—Contd.

ACT III OF 1888—(Concl.)

Agents in Calcutta and not having a registered place of business.

Section 307.

25 CAL. 625-386E:—Liability for keeping animals without License.

Section 335.

24 CAL. 391-378C:—Authority of District Magistrate.

25 CAL. 625-386E:—Liability for keeping animals without License.

Section 336.

24 CAL. 391-378C:—Authority of District Magistrate.

25 CAL. 625-386E:—Liability for keeping animals without a License.

Sections 381 & 382.

2 CAL. 492-385D:—Certificate for closing a burial ground.

ACT I OF 1892.

[Village Chowkidari Amending Act.]

27 CAL. 366-424A:—Arrest—Village Chowkidar, whether a Police Officer.

ACT X OF 1895.

(Public Demands Recovery Act.)

Sections 7, 8, 12 & 22.

28 CAL. 217-437A:—Attachment of crops in execution of a certificate under the Act.

ACT II OF 1897.

(Gambling Act.)

27 CAL. 144-421B:—Cognizable offence—Accomplice—witness present on the occasion of giving bribe.

ACT III OF 1899.

(Calcutta Municipal Act.)

Sections 3, 320 & 574.

30 CAL. 721-500B:—Receiver—Party to criminal Proceedings—Leave of Court.—Owner.

Section. 320.

30 CAL. 927-501E:—Administrator Gen-

ACTS LOCAL—(Bengal)—Contd.**ACT III OF 1899.—(Conld).**

eral of Bengal—Sanction to prosecute—Administrator to estate of deceased person.

S. 449, 450, 452, 579.

33 CAL. 287-569C:—See.

33 CAL. 646-570C:—See.

34 CAL. 341-574D:—See.

Section 495.

30 CAL. 643-499C:—Manufacture for sale—Mustard oil.

Sections 502 & 505.

30 CAL. 421-455C:—Human food, destruction of articles for—Purchase of damaged rice intending to sell it for pigs.

Section 574.

30 CAL. 927-501E:—Administrator General of Bengal—Sanction to prosecute—Administrator to estate of deceased person.

Sections, 645 403.

34 CAL. 30-573D:—See.

ACT VI OF 1901.

(*Assam Labour & Immigration Act.*)

Section 210.

29 CAL. 128-444A:—Verdict of Jury—Disagreement with Judge—Reference to High Court.

ACTS (Local) N. W. P. & Oudh.**ACT I OF 1890.**

[*Municipalities Act.*]

Section 147.

24 ALL. 309-465A:—Continuing breach—Imposition of fine in advance.

8 O. C. 249-579 A:—See.

Section 147, 88.

9 O. C. 29-580 B:—See.

ACTS LOCAL (N.W.P. & Oudh)—Contd.**ACT I OF 1892.**

[*N. W. P. & Oudh Lodging House Act.*]

Section 5 cl. (2).

20 ALL. 584-398 F:—House of "Pragwal" used for accomodation of Pilgrims.

ACT III OF 1901.

(*The U. P. Land Revenue Act.*)

Sections 147, 227.

29 ALL. 272-593 B:—See.

ACTS (Local)—Bombay.**ACT XLVII OF 1860.**

[*Bombay Town Police Act.*]

Section 21.

26 BOM. 609-477 C:—Criminal liability of master for his servant's acts.

ACT VII OF 1867.

[*District Police Bombay.*]

Section 33.

22 BOM. 742-393 D:—"Booth" meaning of the word.

ACT VI OF 1873.

[*District Municipal Act, Bombay*]

Section 48.

23 BOM. 248-467 A:—Re-erection of a structure formerly existing.

Section 84.

23 BOM. 446-467 D:—Magistrate's power to revise the house-valuation.

22 BOM. 708-392 B:—Penalty in addition to arrears of rent cannot be imposed.

22 BOM. 709-392 C:—Contract to collect a tax levied by a Municipality.

22 BOM. 843-395 C:—Duty on goods imported within municipal limits.

ACTS LOCAL (*Bomay*)—Contd.

ACT I OF 1874.

(*Tramways Act, Bombay*).

Section 24.

22 BOM. 739-393C:—"Regulating [the travelling," and the conduct of the company's servants.

ACT V OF 1878.

(*Abkari Act, Bombay*)

Sections 3 cl. [9] & 62.

27 BOM. 551-503D:—Cocaine—Medicated article—Intoxicating drug.

ACT V OF 1879.

(*Land Revenue Act, Bombay*.)

Sections 196 & 197.

22 Bom. 936-396C:—Departmental enquiry into the misconduct of a Revenue officer.

ACT IV OF 1887.

[*Gambling Act, Bombay*.]

Section 3, 4, 12.

29 BOM. 386-548B:—Gaming in a machhwan.

30 BOM. 348-551A:—See.

Section 3, 4 (a)

29 BOM. 264-548A:—Instrument of gaming.

Sections 4, 5 & 7.

22 BOM. 745-393E:—Proof of keeping or of gaming in a common gaming house.

31 BOM 438-590A:—See.

Sections 4, 5, 6, & 7.

28 BOM. 129-504B:—Keeping a common gaming house—Delay in executing the warrant.

ACT III OF 1888.

(*Bombay City Municipal Act*.)

Section 3.

30 BOM. 538-552A:—See.

ACTS LOCAL (*Bombay*)—Contd.

ACT III OF 1888—(Contd.)

Sections 231, 471.

29 BOM. 35-547A:—Notice to construct.

Section 248.

20 BOM. 617-359E:—Fasendar not liable to provide privy accommodation, "Premises—Owner"—meaning of the words.

Section 249.

23 BOM. 528-469 A:—Discretion vested in the Municipal Commissioner.

24 BOM. 75-470B:—Notice to construct urinals in a particular place in the owner's premises.

30 BOM. 392-551A:—See.

Section 381.

24 BOM. 125-470 C:—Lowlying ground—Notice to owner by Municipal Commissioner to fill it with sweet earth up to a certain level.

Section 394.

29 BOM. 193-547B:—Storing of oil.

Section 410.

30 BOM. 126-550B:—See.

Section 461 [d].

22 BOM. 980-397B:—Bye-Law, restricting the height of buildings on a site previously built upon.

Section 471.

29 BOM. 35-547A: See.

Section 472.

22 BOM. 766-394 D:—Continuing offences—Punishment for such offences after a fresh conviction.

ACT II OF 1890.

[*Salt Act Bombay*.]

Section 47 [a].

23 BOM. 788-470A:—Possession of Salt water with the intention of manufacturing Salt.

28 BOM. 346-575A:—See.

ACTS LOCAL—(Bombay)—Concl.

ACT IV 1890.

(District Police Act.)

Section 47.

22 BOM. 746-394A:—Right of the Police to have free access to a place of public amusement or resort.

Section 48 ol. a (1).

22 BOM. 715-393A:—Order as to conduct of procession.

Section 51 & 52.

20 BOM. 394-359A:—Using violence for purpose of extorting a confession—A Police officer to shelter a person in custody.

ACTS (Local)—(Madras)

ACT XXIV OF 1859.

(Madras District Police Act.)

29 Mad. 192-540F:—See

ACT V OF 1882.

(Madras Forest Act.)

Section 21 (a).

26 MAD. 470-488B:—Removal of trees or shrubs.

ACT I OF 1884.

(City of Madras Municipal Act.)

Section 307.

23 MAD. 164-403 B:—Prohibition against depositing stable refuse in a street.

Section 341.

25 MAD. 15-413D:—Necessity for sanction to prosecute a public servant—The accused must be a public servant.

25 MAD. 457-414B:—Liability of Government under taxing Acts.

ACT IV OF 1884.

(District Municipalities Act Madras.)

By-Law No. 48.

23 MAD. 213-404B:—Covering a drain without Municipal permission.

ACTS LOCAL (Madras)—Contd.

ACT IV OF 1884—Concl.

Section 63 (2) & (3).

24 MAD. 195-408C:—Levy of tax—Legality.

Section 63 [3].

25 MAD. 627-479C:—Lands used solely for agricultural purposes—Liability to tax.

Section 179.

19 MAD. 241-353D:—External roofs can be made of grass only with municipal permission.

Section 188.

22 MAD. 455-401F:—Keeping a private Cart-Stand without a License.

Section 189.

21 MAD. 293-390C:—It is not necessary to prove that the Cart-Stand is offensive or fees are levied there.

22 MAD. 455-401F:—Keeping a private Cart-Stand without a License.

Section 197, 191.

29 MAD. 185-540B:—Market.

Section 269.

26 MAD. 475-488D:—Money due on toll-contract.

ACT V OF 1884.

(Madras Local Boards Act.)

20 MAD. 1-356B:—Disobedience to notice.

Section 43.

21 MAD. 428-390E:—A Sanitary Inspector is a Public servant.

Sections 77, 78, 81, 94 & 163

21 MAD. 296-390D:—Omission to fill up the house-register completely.

Section 87 [3].

20 MAD. 16-356 F:—Government stables and carts are free from toll.

ACTS LOCAL (*Madras*)—Contd.

ACT I OF 1886.

[Abkari Act Madras.]

Section 31.

19 MAD. 349-351 B:—A Sub-Inspector of Salt obstructed in attempting to search property entering a house without a warrant.

Section 34.

26 MAD. 124-483 C:—Power of officer in one circle to arrest offenders in another.

Section 36.

19 MAD. 349-354 B:—See section 31.

Section 56.

21 MAD. 63-389 B:—Holder of a License and his servants.

Section 56 [b].

23 MAD. 420-404 C:—License to keep toddy-shop—Failure to keep shop open.

Section 64.

21 MAD. 63-389 B:—Holder of a license and his servants.

ACT III OF 1888.

(Madras City Police Act.)

Sections 42, 45 & 47.

19 MAD. 209-353 A:—Money or securities for money are included in "any of the other articles seized."

ACT III OF 1889.

(Madras Town Nuisances Act.)

Section 3 (10).

22 MAD. 238-401 D:—Imprisonment in default of fine.

ACT IV OF 1889.

(Salt Act, Madras.)

Sections 46 & 47.

19 MAD. 310-354 A:—Search for contraband Salt—Escape from lawful custody.

ACTS LOCAL (*Madras*)—Contd.

ACT III OF 1897.

(Madras District Municipalities Amending Act.)

23 MAD. 213-404 B:—Covering a drain without municipal permission.

ADMISSION.

32 CAL. 1085-566A:—See.

8 O. C. 395-579C:—See.

ADULTERATION.

30 CAL. 643-499 C:—Mustard oil as commercially known.

ADULTERY.

20 MAD. 470-358 G:—Husband's adultery justifies the wife to separate and claim maintenance.

19 ALL. 74-365 E:—For conviction for house-trespass to commit adultery, the husband's want of consent or connivance should be shown.

ANIMAL.

24 CAL. 831-381 A:—Crabs are animals.

25 CAL. 625-386 E:—The owner of land when not let by him is liable for keeping animals on it without a license.

APPEAL.

[1] Presentation.

19 MAD. 354-351C:—An appeal shall be delivered to the proper officer of the Court by the appellant or his pleader.

20 MAD. 87-357A:—A pleader's clerk can present.

[2] From acquittal.

20 ALL. 459-398C:—No difference from appeal from conviction.

21 ALL. 122-457A:—Right of private defence cannot be raised first in appeal.

[3] From Acts.

19 MAD. 238-353B:—No appeal lies from a conviction under the Cattle Trespass Act.

[4] From Criminal Procedure Code.

27 CAL. 372-424D:—No appeal to

APPEAL—Could.

High Court lies when additional evidence has been taken by the Lower Court.

25 CAL. 680-387A:—No appeal from order restoring possession.

25 BOM. 6.0-474D:—No appeal lies on matters of fact where an accused is convicted by a jury on a charge triable by assessors.

(5) Practice.

19 MAD. 354-354C:—Petition of appeal can not be put into the petition-box.

20 MAD. 87-857A:—Pleader's clerk can present.

21 MAD. 114-389E:—Can not be presented by one over whom the appellant's pleader has no control.

20 ALL. 107-370A:—Alteration of conviction in appeal.

23 CAL. 975-376 A:—Power of a Court to alter a finding of acquittal into one of conviction.

18 ALL. 301-363D:—Enhancement of sentence.

24 CAL. 316-377C:—Jurisdiction of Magistrate to enhance the sentence.

22 BOM. 760-394C:—Conviction and sentence on two separate charges—Enhancement of sentence.

27 CAL. 172-421C:—Power of Appellate court to order a retrial.

32 CAL. 1069-565E:—Remand.

32 CAL. 948-565B:—Security to keep the peace.

32 CAL. 1-585C:—No appeal lies to His Majesty in Council from an order of the Viceroy and Governor-General in Council, such order being an act of State.

32 CAL. 379-586A:—Sanction for prosecution.

29 MAD. 122-539A:—Against order for sanction.

APPROVER.

24 CAL. 492-379 A:—The sanction

APPROVER—Could.

to prosecute an approver should be obtained from the High Court by motion.

29 CAL. 782-452 A:—Evidence of Approver requires corroboration.

23 BOM. 493-428 C:—Approver can be tried after the main case in the Sessions Court is finished.

ARREST.

26 CAL. 748-418 B:—Omission to notify the substance of warrant makes the arrest unlawful.

27 CAL. 320-423 B:—If called upon, the police officer should show the authority under which he is arresting.

27 CAL. 457-425 D:—The endorsement of the warrant by the head constable to the peons did not make it legal.

31 CAL. 557-554 B:—See.

32 CAL. 80-559A:—Custody.

ASSAULT.

26 CAL. 630-417 D:—Conviction for assault on a public servant held bad where the authority to act was not produced by him.

31 CAL. 664-554 C:—Sanction for prosecution.

ASSESSORS.

21 ALL. 106-456 B:—Incapacity of assessors to understand the proceedings makes the trial invalid.

25 BOM. 694-475 A:—The trial was invalid having commenced and ended with only one assessor, the other being ill.

ATTEMPT TO COMMIT OFFENCE.

20 ALL. 143-370 B:—Intention is presumed from knowledge of probable consequence of an act.

ATTEMPT TO COMMIT OFFENCE.

Contd.

25 MAD. 726-480 C:—Application to University for duplicate certificate by a person not entitled is not an attempt to cheat and forgery.

BAIL.

22 BOM. 549-392 A:—The order admitting to bail is not revisable by the District Magistrate.

32 CAL. 80-559 A:—Custody.

BENCH OF MAGISTRATES.

21 MAD. 246-390 A:—A trial which began before 7 Magistrates and ended in conviction before 5, was held right.

BIGAMY.

26 CAL. 336-416 B:—The Court should take cognizance of the offence upon complaint of the husband.

25 ALL. 132-495 A:—Prosecution cannot be started at the instance of the bigamous husband's brother.

BLURRED IMPRESSION.

32 CAL. 759-562 E:—See.

BOOTH, MEANING OF.

22 BOM. 742-393 D:—It is a structure on the road causing nuisance to the public.

BREACH OF PEACE.

25 CAL. 559-386 C:—Procedure—Dispute concerning land.

24 BOM. 527-471 D:—Dispute about right to perform service in a public temple.

24 CAL. 391-378 C:—District Magistrate has no authority to institute proceedings.

27 CAL. 981-433 B:—Irregularity of order.

23 BOM. 32-397 D:—Magistrate's power over persons residing beyond his jurisdiction.

25 CAL. 798-388 B:—Wrongful act

BREACH OF PEACE.—(Contd.)

likely to occasion a breach of the peace.

25 CAL. 628-386 F:—Security to keep the peace on conviction of house trespass.

26 CAL. 576-417 B:—Security to keep the peace on conviction of an offence involving a breach of the peace.

27 CAL. 983-433 C:—Recognizance cannot be taken on conviction under section 43 Indian Penal Code.

25 CAL. 559-386 C:—Disputes concerning land.

25 BOM. 179-473 B:—In cases for breach of the peace, the Magistrate cannot determine title.

31 CAL. 990-557 B:—Public Servant.
32 CAL. 793-564 A:—Disobedience of order.

33 CAL. 352-586 B:—See.

BREACH OF TRUST.

31 CAL. 928-556 D:—See.

30 BOM. 49-550 A:—See.

BRIBE.

26 BOM. 193-476 A:—A person who gives bribes is an accomplice of the receiver.

31 BOM. 335-589 A:—See.

BUILDING ERECTED WITHOUT SANCTION.

8 O. C. 249-579 A:—See

33 CAL. 287-569 C:—Deviation.

BURNING GHAT.

25 CAL. 425-384 C:—The Magistrate can take action when the Burning Ghat is in an offensive state as a nuisance.

CHARGE.

(1) Form of.

26 ALL. 195-498 D:—A charge not distinguishing separate offences alleged against the accused was held bad in law.

CHARGE.—Contd.

26 MAD. 126-491 C.—Misjoinder can not be treated as a mere irregularity but the conviction must be set aside.

26 CAL. 560-416 D:—General falsification of accounts.

26 MAD. 454-187 A:—The accused should have been charged and tried separately for kidnapping a child and assault at a later date on mother.

28 CAL. 434-440 D:—Perjury and forgery.

24 ALL. 254-464 C:—Criminal breach of trust in respect of more than 3 items.

27 MAD. 127-493 C:—Preferring a false charge.

27 BOM. 135-479 A:—Number of charges in the same transaction.

30 CAL. 822-500 C:—Misjoinder makes the charge defective.

27 MAD. 129-494 A:—Perferring a false charge.

26 MAD. 55-482 D:—Charge of giving false evidence.

26 MAD. 598-490 B:—Charge of theft and administering drug.

(2) Alteration or amendment of.

26 CAL. 863-419 A:—Power of Appellate Court to alter charge or finding.

27 CAL. 660-428 C:—Charge of theft and conviction of an offence of a different character.

27 CAL. 990-434 A:—The accused can not be convicted on a different finding of fact from that to which they were called to plead.

30 CAL. 248-454 A:—A conviction for house-trespass and hurt was illegal while the charge was for rioting.

31 BOM. 218-553 B:—See.

32 CAL. 1085-566, A:—Criminal breach of trust.

32 CAL. 22-558 B.—Addition to or alteration of.

CHARGES.—Contd.**(3) Misjoinder of.**

26 MAD. 125-483 D:—Misjoinder, an incurable irregularity.

CHARGE TO JURY.**(1) Summing up.**

25 CAL. 736-388 A:—In charging a jury, it is incumbent on the Judge to explain the law to them.

27 BOM. 644-504 A:—Defective direction.

(2) Misdirection.

25 CAL. 561-386 D:—Omission to explain the law to the jury amounts to misdirection vitiating the verdict of the jury.

21 MAD. 83-389 D:—See.

26 MAD. 467-487 E:—The direction of the Judge to the jury that the fact of a stolen shirt having been found in possession of the accused two months after the dacoity was sufficient to convict them of dacoity, was a misdirection.

28 BOM. 316-467 B:—The Sessions Judge should sum up the evidence to the Jury and leave them to form their own opinion.

29 CAL. 379-446 A:—Duty of Judge to explain law to the jury.

26 CAL. 49-415 B:—It is a misdirection to ask the jury to consider a document not proved.

27 BOM. 626-503 E:—The mere fact that some of the points in favor of the accused are not so amplified as they might have been, does not amount to a misdirection.

29 CAL. 782-452 A:—See.

(3) Special cases.

27 CAL. 139-421 A:—Evidence of bad character is inadmissible.

25 CAL. 711-387 D:—The Judge should call the attention of the jury to the different elements constituting the offence and to deal with the evidence.

CHARGE TO JURY—Conld.

25 CAL. 230-382 A:—When the charge amounts to a misdirection, the verdict is erroneous and invalid.

31 CAL. 928-556D:—Criminal Breach of Trust.

CHEATING.

25 MAD. 726-480 C:—Application to university for duplicate certificate by person not entitled.

29 ALL. 141-533A:—See.

32 CAL. 775-563B:—By personation.

32 CAL. 941-565 A:—False representation.

33 CAL. 50-569A:—See

CHOWKIDAR.

29 ALL 377-394A:—See.

COMMISSION.

24 CAL. 551-379E:—The Magistrate can examine a Purdana-shin lady at a private house at her expense.

COMMITMENT.

23 CAL. 975-376 A:—The appellate Court can find the appellant guilty of an offence of which he was acquitted by the Lower Court.

27 CAL. 172-421 C:—The Appellate Court can order a retrial.

28 CAL. 397-439 D:—Power to order commitment instead of directing a fresh inquiry.

CLERK TO SUB-REGISTRAR.

32 CAL. 664-562 C:—Public servant.

COIN.

29 ALL. 141-533 A:—See.

COMMON GAMING HOUSE.

29 BOM. 226-547C:—Jamrat khana.

COMPENSATION.

22 BOM. 438-391 C:—Indirect consequences cannot be considered in awarding compensation.

25 ALL. 315-496D:—The award of compensation to the accused for a frivolous accusation is to be made by the order of discharge or acquittal, and not by a separate order.

22 BOM. 717-393 B:—No award of compensation can be made when no fine is inflicted.

25 MAD 667-480 A:—See.

28 CAL. 164-436 C:—Order of payment of compensation and imprisonment in default of such payment is illegal.

19 MAD. 238-353B:—Imprisonment cannot be inflicted in default of payment of compensation under the Criminal Trespass Act.

19 ALL. 73-365 D:—For default of compensation, imprisonment can not be ordered.

29 CAL. 479-449C:—Dismissal of complaint as false, vexatious and malicious.

23 BOM. 934-396 B:—A Police Officer can not be ordered to pay for frivolous and vexatious complaint.

28 CAL. 251-437 D:—Imprisonment in default of payment of.

25 BOM. 48-472 A:—The Magistrate can not direct payment of compensation in a case of security to keep the peace.

26 BOM. 150-475 E:—The Magistrate can order a police officer to pay compensation for making a false complaint of a non-cognizable offence.

21 MAD. 237-389 G:—Sanction can be granted to prosecute a person against whom has been awarded a compensation.

26 CAL. 181-415 D:—It is improper to award compensation to the accused and also to direct or sanction the prosecution of the complainant for bringing a false charge.

COMPENSATION—Contd.

18 ALL. 358-364A:—In a complaint of wrongful seizure of cattle no compensation can be awarded.

24 CAL. 53-376 C:—Compensation can be awarded only in case of complete discharge or acquittal.

25 MAD. 667-480A:—In the case of a complaint made to a village-Magistrate no compensation can be awarded.

27 MAD. 59-492D:—The order for compensation is always dependent upon the facts of the particular case.

26 MAD. 127-384A:—Attempt should be made to levy the compensation before awarding imprisonment in default.

COMPLAINT.*(1) Institution.*

27 CAL. 985-433 D:—Complaint should be particular about facts stated.

30 CAL. 923-501 D:—A complaint can not be dismissed without examining the complainant.

30 CAL. 910-501 A:—A complaint is defined in Section 4 cl. (h) of the Criminal Procedure Code.

29 CAL. 410-448 A:—Right of complainant to be examined and to have his case tried.

21 ALL. 109-456 D:—The Magistrate who takes cognizance of a case under Section 190, (1) (c) can hold a preliminary enquiry for commitment.

30 CAL. 415-455 A:—Petition to Collector against a subordinate.

22 MAD. 148-401A:—A Magistrate may commit the case when a valid objection is raised that he cannot try the complaint.

26 CAL. 786-418 C:—No sanction is necessary for trying an offence under Section 193, Indian Penal Code when committed in the course of a Police investigation.

26 CAL. 336-416B:—When a wife is defamed of unchastity, the husband may complain.

COMPLAINT—Contd.

26 ALL. 183-498 A:—Order for compensation for frivolous and vexatious complaint is dependent on the existence of a complaint.

25 ALL. 209-495C:—See.

21 BOM. 536-360C:—“Any person in possession” in Section 441 Indian Penal Code do not mean only a complainant in possession.”

28 CAL. 211-436D:—Dismissal of complaint—Re-arrest without previous order being set aside.

25 BOM. 151-472 C:—A husband can complain when the wife is defamed as unchaste.

26 BOM. 150-475E:—A Police officer can complain in a non-cognizable case.

(2) *Power to refer to Subordinate Officers.*

20 MAD. 387-358 A:—A Magistrate can send a case for enquiry by the police.

(3) *Withdrawal of.*

23 MAD. 626-406A:—A Magistrate cannot withdraw a charge pending before the police.

(4) *Dismissal of.*

28 CAL. 102-436 A:—Dismissal of complaint for absence of complainant.

20 MAD. 388-358B:—The Magistrate is bound to examine witnesses tendered by the complainant before acquitting the accused.

4 O. C. 127-508 B:—A complaint can not be dismissed without examining the complainant.

30 CAL. 415-455A:—Petition against subordinates.

29 CAL. 457-449 B:—Complainant accusing several persons—Conviction of one and refusal of Magistrate to proceed against others.

(5) *Revival of.*

24 CAL. 286-377 A:—When an original complaint is dismissed, a fresh complaint on the same facts cannot be entertained.

COMPLAINT—[Conld.]

24 CAL. 528-379 D:—Where a complaint was dismissed by an Honorary Magistrate, a fresh application on the same facts, made to a Presidency Magistrate was not maintainable.

22 BOM. 711-392 D:—A fresh complaint lies after the withdrawal of the complaint for want of sanction.

22 ALL. 106-459 A:—When a complaint is dismissed, another tribunal competent to try can not re-open the matter.

27 CAL. 126-419 D:—The High Court can order a further enquiry to be made in respect of an order of discharge passed by a Presidency Magistrate.

26 ALL. 514-521 B:—Under Criminal Procedure Code.

26 ALL. 512-521 A:—Frivolous.

31 CAL. 664-554 C:—Sanction for.

29 ALL. 7-532 A:—Dismissal no bar to a fresh complaint.

29 ALL. 137-522 E:—Frivolous.

28 ALL. 625-531 C:—Frivolous.

33 CAL. 1-567 A:—False charge.

COMPOUNDING OFFENCE.

3 O. C. 314-507 C:—Where a person is convicted of a non-compoundable offence he cannot be, in appeal, acquitted of that offence and convicted of a compoundable offence without being given an opportunity of effecting a composition of the offence.

22 BOM. 859-395 E:—A complaint for mischief done to the private property of a village Mahar is compoundable.

CONFESSION.

(1) General cases.

23 BOM. 221-466 E:—Confession not signed by the accused is inadmissible in evidence, but parol evidence can be taken to prove the terms of the confession.

CONFESSION—[Contd.]

(2) Under threat or pressure.

26 MAD. 38-481 B:—Confession caused by promise to a Village Magistrate.

(3) Subsequently Retracted.

20 ALL. 133-370 D:—When a confession is retracted, its credibility is a matter to be decided by the Court according to the circumstances of each particular case.

27 CAL. 295-422 E:—Corroboration of evidence of witnesses retracted.

25 BOM. 168-473 A:—A confession duly recorded and certified is admissible in evidence and a mere subsequent retraction of it is not enough in all cases to make it appear to have been unlawfully induced.

(4) Made to Magistrate.

21 BOM. 495-360 A:—Statement of prisoner made in the course of, or after enquiry

28 CAL. 689-443 A:—Evidential value of, against maker and co-accused.

23 BOM. 221-466 E:—Confession not signed by the accused is not admissible but parol evidence can be taken to prove the terms of the confession.

22 ALL. 115-459 C:—Contradictory statements made to different Magistrates on the same facts.

22 BOM. 235-362 B:—A confession made to a Magistrate of a Native State is admissible in evidence.

23 BOM. 316-467 B:—Admissibility of confession retracted.

(5) Made to Police Officers.

20 BOM. 795-359 G:—A confession made to a jailor in a Native State who is not a Police Officer is not a confession made in police custody.

22 BOM. 235-362 B:—Confession made to a Magistrate of a Native State is admissible in evidence.

25 BOM. 543-473 D:—When one makes a confession in police custody, it is necessary to ascertain how long he has been under the police.

CONFESSION—[Could].

27 CAL. 366-424 A:—A village chowkidar is not a police-officer.

25 CAL. 413-383 C:—Statement leading to the discovery of facts.

(6) *Of prisoners tried jointly.*

22 ALL. 445-460 F:—Confession of co-accused.

19 MAD. 482-355 C:—Confession of co-accused—Corroboration.

22 MAD. 491-402 B:—Confession of co-accused in a joint trial.

23 MAD. 151-402 C:—Confession by one of several persons jointly tried for the same offence.

23 ALL. 53-461 A:—Plea of guilty by some of the accused in a joint trial.

32 CAL. 550-561 E:—See.

32 CAL. 1085-566 A:—See,

8 O. C. 395-579 C:—See.

CONFINEMENT.

31 CAL. 710-555 B:—Extortion.

CONTEMPT OF COURT.

(1) *Penal Code section 174.*

27 CAL. 985-433 D:—Charge of furnishing false evidence in a Land Acquisition Proceeding.

(1) *Penal Code section 174.*

20 MAD. 31-356 G:—Non-attendance in obedience to an order of a public servant.

CONTINUING OFFENCE.

22 BOM. 766-394 D:—A separate prosecution was necessary.

22 BOM. 841-395 B:—Additional fine for continuing offence.

19 ALI. 109 366 A:—Kidnapping from lawful guardianship is not a continuing offence.

CONVICTION.

25 BOM. 712-475 C:—Previous conviction affecting the sentence.

CONVICTION—[Could].

51 CAL. 983-557 A:—Reasons for recording.

34 CAL. 325-574 C:—See.

CO-PRISONER.

22 ALL. 445-460 F:—Previous statement to Committing Magistrate, retracted in Sessions Court.

31 CAL. 1-502 B:—See.

19 MAD. 482-355 C:—Confession of co-accused—Corroboration.

22 MAD. 491-402 B:—Confession of co-accused in a joint trial.

23 MAD. 151-402 C:—Confession by one of several persons jointly tried for the same offence.

CONSPIRACY.

5 O. C. 321-513 C:—Reasonable ground for believing in the existence of a conspiracy.

COSTS.

28 CAL. 302-438 B:—The Magistrate cannot pass an order for costs without giving notice to the person whom he makes liable.

COUNTERFEITING COIN.

23 ALL. 420-463 A:—Removing rings from coins used as ornaments and restoring the same to circulation is not an offence.

31 CAL. 1007-557 C:—See.

COURT INSPECTOR.

7 O. C. 82-517 C:—Persons conducting prosecution or defence not to occupy a seat on the dais of the Court.

CRABS.

24 CAL. 881-381 A:—Crabs are animals.

CREMATION.

25 CAL. 425 384 C:—Order of removal of a Burning Ghat.

CRIMINAL BREACH OF TRUST.

29 CAL. 489-450 B:—Appropriation by servant of papers ordered to be destroyed was not the offence.

4 O. C. 376-509 A:—The accused is triable where act is done or where consequence ensued.

28 CAL. 362-489 C:—Refusal to pay to a person money claimed by another.

24 ALL. 251-464 C:—See.

31 CAL. 928-556 D:—See.

29 ALL. 25-532 C:—See.

32 CAL. 1085-566 A:—See.

27 ALL. 260-522 C:—See.

27 ALL. 69-592 C:—See.

CRIMINAL COURT.

32 CAL. 783-563 C:—See.

CRIMINAL FORCE.

23 BOM. 491-468 D:—Order to restore possession of immoveable property.

CRIMINAL INTIMIDATION.

20 BOM. 794-359 F:—A threat of getting a police constable dismissed is not a threat of injury.

CRIMINAL MISAPPROPRIATION.

22 MAD. 151-401 B:—Harvesting crops after attachment.

CRIMINAL PROCEDURE CODE.

(ACTS XXV OF 1860) (VIII OF 1869) (X OF 1872), (X OF 1882,) (V OF 1898).

Section 3.

25 CAL. 333-383 B:—Effect of the repeal of a repealing statute.

CRIMINAL PROCEDURE CODE—

[Contd.]

Section 4.

27 CAL. 144-421 B:—Illegal gratification—Abetment of offence of giving bribes.

20 MAD. 470-358 G:—Maintenance—Adultery.

28 CAL. 739-443 B:—See.

25 BOM. 151-472 C:—Defamation of wife—Complaint by husband—aggrieved party.

26 BOM. 150-475 E:—Complaint by a police officer in a non-cognizable case—False complaint.

26 MAD. 607-490 C:—Offence—Jurisdiction of Magistrate in Mysore to try and convict a European British subject.

30 CAL. 910-501 A:—“Complaint,” meaning of—Prosecution for adultery or enticing away a married woman.

30 CAL. 285-453 F:—See.

30 CAL. 415-455 A:—See.

Section 4, 476.

28 ALL. 89 526 D:—Inquiry against a subordinate.

33 CAL. 1-567 A:—Complaint.

29 MAD. 517-542 A:—See.

Section 6.

28 CAL. 709-443 B:—See.

Section 11.

20 MAD. 441-358 D:—Sentence imposed in British India postponed, till expiry of a sentence imposed in Mysore.

Section 12.

19 ALL. 114-366 C:—Jurisdiction—Transfer of Magistrate—Order passed by a Magistrate after his successor had entered upon his appointment.

29 CAL. 389-417 A:—See.

Sections 15, & 16.

21 MAD. 246-390 A:—Bench of Magistrates.

CRIMINAL PROCEDURE CODE—

[Contd.]

29 CAL. 483-450 A:—See.

Section 26.

19 ALL. 465-368A:—Commitment by Magistrate to Court of Session—No jurisdiction in Court of Session—Commitment quashed.

Section 28.

23 CAL. 442-373 A:—Power—District Magistrate to transfer cases to a Subordinate Magistrate—Compensation, order awarding.

Sections 31, 32 & 33.

22 MAD. 153-401 C:—Order of Deputy Magistrate under the Court Fees Act VII of 1870.

Section 35.

23 BOM. 706-469 C:—Conviction for several offences at one trial.

Section 54.

28 CAL. 253-437C:—Escape from lawful custody—"Any such offence" meaning of.

Sections 54, 55 & 56.

27 CAL. 320-423 B:—Resistance to arrest by police—Escape from custody.

18 ALL. 246-363 C:—Arrest without sufficient authority but in good faith.

Section 89.

27 CAL. 366-424 A:—Rescue from custody of Village Chowkidar—Lawful custody.

Section 75.

28 CAL. 399-439 E:—Warrant of arrest—Resistance to lawful apprehension.

Section 75 & 76.

23 CAL. 896-375 C:—Warrant of arrest—Signature of Magistrate—Initials—Notification of substance of warrant.

24 CAL. 320-377 D:—Warrant of arrest—Illegal issue of warrant.

CRIMINAL PROCEDURE CODE—

[Contd.]

Sections 77 & 78.

21 MAD. 296-390 D:—Illegal distraint—Resistance to distraining officer.

Section 79.

27 CAL. 457-425 D:—Arrest by persons—Rescue of persons arrested—Whether lawful arrest.

Section 80.

26 CAL. 748-418B:—Warrant of arrest—Notification of substance of warrant.

23 CAL. 896-375 C:—Warrant of arrest—Signature of Magistrate—Notification of substance of warrant.

27 CAL. 320-423 B:—Resistance to arrest by police—Escape from custody.

24 CAL. 320-377 D:—Warrant of arrest—Illegal issue of warrant.

Section 83.

20 MAD. 235-357D:—Warrant issued under Act XIII of 1859—Execution outside jurisdiction.

20 MAD. 457-358 F:—Breach of contract.

20 ALL. 124-370 C:—Fraudulent breaches of contract by workmen.

Sections 87 & 88.

29 CAL. 417-448 D:—See.

Sections 87, 88, & 89.

20 MAD. 88-357 B:—Attachment of property as of an absconding person—Claim to property attached—Procedure.

22 ALL. 216-460 A:—Absconding offender—Proclamation and attachment.

Section 90.

24 CAL. 320-377 D:—Illegal issue of warrant.

Section 103.

26 MAD. 419-493 A:—Party called upon to attend and witness a search.

2 O. C. 99-505D:—Search by police—appeal—New plea taken in.

CRIMINAL PROCEDURE CODE

[Contd.]

21 MAD. 83-389 D:—The person conducting the search can select the witnesses.

27 CAL. 692-429 A:—See.

Section 105.

26 MAD. 656-491B:—Refusal to accord sanction.

Section 106.

See under Recognizance to keep the peace.

24 CAL. 344-378A:—Jurisdiction of Magistrate—Recognizance to keep the peace.

23 BOM. 32-397 D:—Security to keep the peace—Magistrate's power to demand such security from persons residing beyond his local jurisdiction.

25 CAL. 798-388B:—Wrongful act likely to occasion a breach of the peace.

29 CAL. 393-447 C:—See.

25 CAL. 628-386F:—Security to keep the peace on conviction—Breach of the peace.

26 CAL. 576-417 B:—Security for keeping the peace on conviction.

30 CAL. 366-454 B:—See.

27 CAL. 1983-433 C:—Recognizance to keep the peace.

25 CAL. 559-386 C:—Disputes concerning land—Procedure—Recognizance.

25 CAL. 440-385A:—Liability to forfeiture—Evidence necessary.

30 CAL. 93-452 C:—See.

30 CAL. 101-453A:—See.

30 MAD. 48-543 D:—See.

30 MAD. 182-545 A:—See.

29 MAD. 190-540E:—Appellate Court cannot bind over when original Court could not.

Section 107.

23 CAL. 709-443B:—See.

24 ALL. 151-464 A:—Transfer—power of District Magistrate to transfer

CRIMINAL PROCEDURE CODE

[Contd.]

proceedings instituted by him against a person not within district.

32 CAL. 918-565B:—See.

32 CAL. 966-565 C:—Security to keep the peace.

27 ALL. 92-592D:—See.

32 CAL. 80-559A:—Custody.

27 ALL. 623-526A:—No appeal from order requiring security to keep the peace.

27 ALL. 293-522 F:—Delegation of the enquiry.

27 ALL. 172-522 A:—Security for good behaviour.

8 O. C. 91-578 B:—Joint trial.

27 ALL. 262-522 D:—Security without personal bond invalid.

26 MAD. 469-488 A:—Order for security to keep the peace on convictions for offences not necessarily involving a breach of the peace.—Validity.

25 ALL. 273-496C:—Security for keeping the peace—Evidence of general repute not available in such cases.

26 ALL. 190-498 C:—Security for keeping the peace—Evidence as to likelihood of breach of the peace.

29 CAL. 389-447A:—See.

26 MAD. 656-491B:—Refusal to accord sanction—Appeal to Magistrate who has been directed and empowered to hear appeals.

31 CAL. 350-502 D:—Transfer—Security to keep the peace—Jurisdiction of Magistrate—Proceedings—Initiation of.

30 CAL. 443-455 D:—See.

26 ALL. 202-519 B:—See.

Sections 107, 110.

27 ALL. 92-592 D:—See.

Sections 107, 145.

28 ALL. 406-530C:—See.

Section 109.

31 CAL. 557-551B:—Arrest.

CRIMINAL PROCEDURE CODE

[Contd.]

Section 110.

27 CAL. 781-429 C:—Security for good behaviour from habitual offenders.

28 CAL. 709-443 B:—See.

27 CAL. 993-434 C:—Security for good behaviour—Jurisdiction of Magistrate over persons not residing within his jurisdiction—Reputation.

27 CAL. 656-423 A:—Security for good behaviour—Imprisonment in default of security.

29 CAL. 455-449A:—See.

23 ALL. 422-463 B:—Security for good behaviour—Term for which imprisonment in default of finding security shall be ordered.

24 CAL. 155-376 E:—Security for good behaviour—Power of Sessions Judge to remand—Taking further evidence.

24 ALL. 148-463 E:—See.

29 CAL. 779-451E:—See.

30 CAL. 366-454 B—See.

21 ALL. 107-456C:—See.

20 ALL. 205-371G:—Security for good behaviour—Object of demanding security—Discretion of Magistrate in accepting or refusing sureties tendered.

27 CAL. 662-428 D:—Proceedings for taking security for good behaviour—Discharge of persons—Further enquiry.

19 ALL. 291-367 B:—Security for good behaviour—Transfer.

5 O.C. 203-511A:—Habitual offender, evidence of being—General repute, evidence of—Bad character.

21 ALL. 86-399C:—Security for good behaviour—Conviction of principal—Forfeiture of bond.

29 CAL. 392-447B:—See.

24 ALL. 148-463 E:—Security for good behaviour—Power of District Magistrate to re-open proceedings on the same record.

24 ALL. 471-466 A:—Security for good behaviour—Power of Court to assign geographical limits within which the sureties required must reside.

CRIMINAL PROCEDURE CODE—

[Contd.]

26 BOM. 418-476 C:—Security for good behaviour—Witness—Magistrate—Summons—Refusal to summon—Procedure.

25 A.L. 272-496 B:—Security for good behaviour—Inquiry into sufficiency of security delegated to Tehsildar—Practice.

31 CAL. 419-503 B:—Abetment—Abetment of the commission of offences involving a breach of the peace—Residence.

5 O.C. 243-512 B:—Habitual offenders, trial of—Accused two or more dealt with in the same enquiry.

10 O.C. 168-583 C:—See.

30 MAD. 282-576 D:—See.

28 ALL. 629-531D:—Forfeiture of bond.

9 O.C. 357-581 C:—Malicious prosecution.

33 CAL. 8-567B:—Further enquiry.

28 ALL. 306-528 F:—Fresh proceedings taken immediately after the expiry of the period of a previous security bond.

Sections 110 & 112.

3 O.C. 247-507A:—Transfer of proceedings—Power of High Court.

Sections 110, 118.

31 CAL. 783-585 B:—See.

Section 112.

26 MAD. 471-488C:—Notice to give security for three months—Order for security for twelve months.

5 O.C. 243-512B:—Habitual offenders, trial of—Accused two or more dealt with in the same enquiry.

27 CAL. 781-429C:—See.

9 O.C. 69-581B:—General repute.

Section 114.

18 ALL. 246-363C:—Arrest without sufficient authority but in good faith—Right of private defence.

Section 117.

23 CAL. 621-375A:—General repute, evidence of—Rumours.

27 CAL. 781-429 C:—See.

25 ALL. 273-496 C:—Security for keeping the peace.

5 O.C. 243-512B:—Habitual offenders, trial of.

29 CAL. 779-451 E:—Security for

CRIMINAL PROCEDURE CODE—

[Contd.]

good behaviour—from habitual offenders.

Section 118.

23 **ALL.** 80-461 **C.**—Security for good behaviour—Discretion of Court—Security demanded not to be excessive.

16 **MAD.** 471-488 **C.**—Notice to give security for three months—Order to give security for twelve months.

35 **ALL.** 272-496 **B.**—Security for good behaviour—Inquiry into sufficiency of security delegated to Tahsildar—Practice.

2 **O. C.** 307-505 **E.**—Security for good behaviour.

27 **CAL.** 781-429 **C.**—Security for good behaviour from a habitual offender.

Section 119.

21 **ALL.** 107-456 **C.**—Security for good behaviour.

Section 122.

25 **ALL.** 131-494 **F.**—Security for good behaviour—Sureties offered refused on the ground of their relationship to the person required to find security.

26 **ALL.** 189-498 **B.**—Security for good behaviour—Power of Magistrate to refuse to accept surety offered.

26 **ALL.** 371-520 **B.**—See.

Section 123.

23 **ALL.** 422-463 **B.**—Security for good behaviour.

25 **ALL.** 375-496 **F.**—Security for good behaviour—Reference to the Sessions Judge.

2 **O. C.** 307-505 **E.**—Confirmation by Sessions Judge of Deputy Magistrate's order.

27 **MAD.** 525-524 **B.**—See.

Sections 124, 125, 126.

8 **O. C.** 245-578 **D.**—Security for good behaviour.

CRIMINAL PROCEDURE CODE—

[Contd.]

Section 125.

29 **CAL.** 455-449 **A.**—Security for good behaviour—Surety-bond—Jurisdiction of District Magistrate.

Section 126.

9 **O. C.** 381-882 **A.**—Intention to commit a breach of the peace at the time of committing the offence essential.

Section 127.

26 **CAL.** 630-417 **D.**—Detering a public servant from discharge of his duty—Public servant acting under warrant of attachment.

Section 133.

See under Nuisance under the Criminal Procedure Code.

25 **CAL.** 425-384 **C.**—Jurisdiction of District Magistrate to order further enquiry in a proceeding.

22 **ALL.** 267-4 60 **C.**—See.

24 **CAL.** 395-378 **D.**—Obstruction to Public thoroughfare.

22 **BOM.** 714-392 **E.**—Magistrate's power to order the excavation to be fenced, and not to be filled.

22 **BOM.** 988-397 **C.**—Obstruction in a public river.

25 **CAL.** 852-399 **D.**—Order regulating the boat-traffic at a landing place.

27 **CAL.** 918-432 **A.**—Dispute regarding right of property.

23 **CAL.** 459-373 **D.**—Nomination of Jury by Magistrate—Bonafides of claim.

25 **CAL.** 278-382 **E.**—Jurisdiction of Magistrate—Public nuisance—Obstruction in public way.

26 **CAL.** 869-419 **B.**—Nuisance—Bonafide questions of title—Obstruction to public way.

23 **ALL.** 159-462 **C.**—Nuisance—Encroachment upon unmetalled portion of a Government road.

31 **CAL.** 979-356 **E.**—Public nuisance.

32 **CAL.** 930-564 **C.**—Public nuisance.

CRIMINAL PROCEDURE CODE—

[[Contd.]]

28 ALL 98-526F:—Defence raising question of title.

Section 135.

22 ALL 267-460C:—Order of Magistrate for removal of unlawful obstruction—Application for appointment of a jury.

Section 144.

24 BOM. 527-471 D:—Dispute about right to perform service in a public temple—Notice.

31 CAL. 990-557 B:—Order by a public servant.

26 MAD. 471-438 C:—Notice to give security for three months—Order to give security for twelve months—Validity.

27 CAL. 785-430 A:—Prohibition to both parties from exercising right of possession.

27 CAL. 918-432A:—Dispute regarding right to property.

32 CAL 935-564D:—See.

32 CAL. 154-559 B:—Division of crop.

32 CAL. 793-564 A:—Breach of the peace.

Section 144 555.

34 CAL. 897-588 C:—See.

Section 145.

24 ALL 443-465 D:—No decision come to by Magistrate as to party in possession—Application for revision at instance of party who could not in his own right be entitled to immediate possession—Practice.

5 O. C. 1-509 B:—Criminal revision—Revision, High Court's power of.

27 CAL. 918-432A:—Dispute regarding right to property—Power of Magistrate to determine right and shares of parties.

28 CAL. 416-440 B:—Immovable property, dispute as to—Order of Magistrate.

CRIMINAL PROCEDURE CODE—

[Contd.]

28 CAL. 416-441 A:—Non-joinder of necessary parties—Jurisdiction of High Court.

28 CAL. 709-443 B:—Power of High Court to transfer a case—Meaning of "Case" and "Criminal case."

29 CAL. 208-444 B:—Possession, decree of Civil Court—Duty of Magistrate.

29 CAL 242-445 B:—Subordinate Magistrate, refusal to take proceedings—Institution of such proceedings by District Magistrate—Jurisdiction.

29 CAL. 885-452 B:—Jurisdiction—Report by police officer of one District—Proceedings instituted by Magistrate of another District.

30 CAL. 443-455 D:—Jurisdiction to take security.

31 CAL. 685-555A—Jurisdiction.

10 O. C. 89 582 B:—See

32 CAL 287-560C:—See.

32 CAL. 249-560 B:—Dispute about partnership property.

32 CAL. 552-561 F:—See.

32 CAL. 602-562 B:—See.

32 CAL. 1093-566C:—See.

32 CAL. 771-563 A:—See.

32 CAL. 796-564B:—See.

27 ALL. 300-523D:—See.

27 ALL. 296-523 B:—See.

28 ALL. 266-528 C:—Crops secured from the land.

33 CAL. 352-586B:—Breach of the peace.

33 CAL. 33-568A:—Possession.

29 MAD. 561 542 C:—Enquiry to be held before issuing preliminary order.

33 CAL. 352-586B:—See.

34 CAL. 840-588 B:—See.

Section 145 & 146.

29 CAL. 382-446 B:—Attachment of property by Magistrate—Order relating to the management of such property—interference by High Court.

CRIMINAL PROCEDURE CODE.—

[Contd.]

30 CAL. 110-453 C:—Jurisdiction—Attachment of Crops "cut and stored."

Sections 145 & 148.

See Possession, Order of Criminal

Court as to.

27 CAL. 259-422 C:—Dispute regarding right to collect rent—Jurisdiction of Magistrate.

26 CAL. 188-415 E:—Power of Local Legislature—Order Concerning a ferry.

27 CAL. 892-431 A:—Dispute as to Collection of rents—Zemindars and tenants—Parties concerned, meaning of.

25 CAL. 559-386 C:—Dispute concerning land—Procedure—Recognizance.

24 CAL. 391-378 C:—Authority of District Magistrate—Subdivisional Magistrate.

27 CAL. 981-433 B:—Possession, Order of Criminal Court, as to—Contents of such order.

25 CAL. 423-384 B:—Possession, order of Criminal Court as to—Parties to proceedings.

24 CAL. 55-376 D:—Possession, order of Criminal Courts as to—Initial proceedings—Parties concerned.

26 CAL. 625-417 C:—Possession, order of Criminal Court as to—Jurisdiction of Magistrate—Power of Revision by the High Court.

27 CAL. 785-430 A:—Dispute in respect of a colliery—Prohibition to both parties from exercising right of possession.

23 CAL. 557-374 B:—Dispute concerning julkar right—Breach of the peace—Imminent danger.

25 CAL. 434-384 E:—Restoration of possession of immoveable property.

23 BOM. 494-468 D:—Order to restore possession of immoveable property.

27 CAL. 174-422 A:—Restoration of possession of immoveable property.

CRIMINAL PROCEDURE CODE.—

[Contd.]

24 CAL. 757-380 E:—Order for assessment of cost—Power of Magistrate—Delay—Notice to Parties.

24 ALU. 443-465 D:—Application for revision at instance of party who could not in his own right be entitled to immediate possession—Practice.

24 BOM. 527-471 D:—Dispute about right to perform service in a public temple—Notice—High Court—High Court's Criminal revisional jurisdiction.

26 MAD. 188-485 A:—Jurisdiction of High Court to transfer a case pending disposal.

26 ALL. 144-497 D:—High Court's power of revision.

25 ALL. 537-497 B:—Order of Magistrate on dispute as to possession of immoveable property—Revision—Jurisdiction of High Court.

26 MAD. 471-488 C:—Notice to give security for three months—Order for giving security for twelve months—Validity.

30 CAL. 508-499 A:—High Court, power of interference.

30 CAL. 593-499 B:—Receiver—Party—Jurisdiction—Proceedings.

30 CAL. 918-501 B:—Evidence—Order unsupported by evidence.

Section 147.

29 MAD. 97-538 C:—Concerning any land—construction of.

29 MAD. 237-541 B:—Dispute for using a mosque.

Section 148.

28 CAL. 302-438 B:—Jurisdiction—Costs—Order for assessment of, without notice to the party affected thereby—Revision by High Court.

29 MAD. 373-541 E:—See.

Section 155.

24 CAL. 691-380 C:—Wrongful entrance and illegal search, liability of Police officer, for.

Section 156.

30 CAL. 923-501 D:—Complaint—

CRIMINAL PROCEDURE CODE.—

[Contd.]

Dismissal of complaint, examination of
—False charge.

Section 157.

20 MAD. 189-357 C:—Charge sheets, right of an accused to copies of, before trial.

6 O. C. 1-514 A:—Police subordinate to District Magistrate.

22 BOM. 596-391 F:—Statement of witnesses before Police not admissible against accused—Evidence.

Section 159.

30 CAL. 1923-501 D:—Complaint, dismissal of—Complainant, examination of—False charge.

Section 160.

24 CAL. 320-377 D:—Justifiable assault—Illegal issue of warrant.

Section 160 cl. (3).

25 BOM. 543-473 D:—Evidence—Confession—Confession of an accused while in custody of the police.

Section 161 & 162.

19 ALL. 390-367 F:—Right of the accused or his agent to see the special diary.

23 MAD. 544-405 D:—Examination of witness by the police—Legal obligation to speak the truth—Refusal to answer questions.

22 BOM. 596-391 F:—Statement of witnesses before Police not admissible against accused—Evidence.

27 CAL. 495-422 E:—Evidence in criminal case—Reference to High Court.

19 ALL. 390-367 F:—Right of the accused or his agent to see the special diary.

Section 162.

29 CAL. 483-450 A:—Witness, statement of—Police investigation—Murder—Suspicion.

31 CAL. 1050-557 D:—Prosecutor's right of reply.

CRIMINAL PROCEDURE CODE.—

[Contd.]

27 ALL. 469-524 D:—See.

33 CAL. 1023-571 D:—Statement of witness recorded by police officer.

Section 164.

22 ALL. 115-459 C:—False evidence—Statement made in the course of a "judicial proceeding."

21 BOM. 495-360 A:—Statement of prisoner made before inquiry.

29 CAL. 483-450 A:—Witnesses, statement of—Duty of police with fear of witnesses being gained over.

23 BOM. 221-466 E:—Confession—Confession not signed by the accused.

22 BOM. 235-362 B:—Confession—Confession made to a Magistrate of a Native State.

24 CAL. 691-380 C:—Wrongful entrance and illegal search, liability of Police officer for.

10 O. C. 112-582 C:—See.

32 CAL. 550-561 E:—Confession.

8 O. C. 395-579 C:—See.

32 CAL. 1085-566 A:—Criminal breach of trust.

29 MAD. 89-538 A:—See.

Section 165.

27 CAL. 692-429 A:—Arms or ammunition—Search, Legality of.

Section 167.

23 BOM. 32-397 D:—Remand of prisoners in Police custody—Security to keep the peace.

Section 168.

20 MAD. 189-357 C:—Charge sheets. Right of an accused to copies of, before trial.

Sections 172.

19 ALL. 390-367 F:—Right of the accused or his agent to see the special diary.

Section 173.

20 MAD. 189-357 C:—Charge sheets.

CRIMINAL PROCEDURE CODE.—

[Contd.]

right of an accused to copies of, before trial.

29 CAL. 410-448 A:—Complaint to Police—Right of complainant to be examined and to have his case tried.

25 ALL. 273-496 U:—Security for keeping the peace—Evidence—Evidence of general repute not available in such cases.

Section 177.

24 CAL. 638-380 A:—Jurisdiction of Presidency Magistrate—Complaint by wife against husband for maintenance.

26 BOM. 418-476 C:—Security for good behaviour—Witness—Magistrate—Summons—Refusal to summon—Procedure.

Section 178.

28 CAL. 709-443 B:—Transfer—Bias, reasonable apprehension of—Witness, convenience to.

Section 179.

4 O. C. 376-509 A:—Accused triable in District where act is done or where consequence ensued.

Section 180.

18 ALL. 350-363 D:—Enhancement of sentence—Power of Appellate Court.

Section 181.

28 ALL. 372-529 E:—See.

Section 182.

25 CAL. 858-399 E:—The expression "local area" includes a district.

24 BOM. 287-470 D:—Offence not triable except with the certificate of Political Agent or sanction of Government.

19 ALL. 109-366 A:—Kidnapping from lawful guardianship—Offence committed outside British territory.

24 ALL. 256-464:—Offence committed outside British India by a native Indian subject—Certificate of Political Agent not obtained before making enquiry.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 190.

21 ALL. 109-456 D:—Jurisdiction of Magistrate to hold preliminary enquiry not ousted.

30 CAL. 449-456 A:—Jurisdiction—Transfer of Criminal case to subordinate Magistrate—Power of, to pass order relating to a case not on his own file.

22 MAD. 148-404 A:—See.

4 O. C. 127-508 B:—Complaint, dismissal of, without examining complainant—Sanction to prosecute.

26 CAL. 786-418 C:—Right of the accused to a claim to transfer—Interference by the High Court in a pending case.

29 CAL. 417-448 D:—Defence, Right of private defence—Public servant acting in good faith under colour of his office.

8 O. C. 418-580 A:—See.

Section 191.

18 ALL. 465-364 F:—Complaint—By whom a complaint of an offence may be made.

21 ALL. 109-456 D:—Jurisdiction of Magistrate to hold preliminary enquiry not ousted.

22 MAD. 148-404 A:—See.

26 CAL. 336-416 B:—Bigamy—Complaint by the husband—"Person aggrieved."

25 BOM. 151-472 C:—defamation of wife—Complaint by husband—"aggrieved party."

27 CAL. 820-430 C:—Sanction, application necessary for—Power of Collector under Land Acquisition Act.

29 CAL. 392-447 B:—Proceedings instituted by Magistrate on his own knowledge or suspicion—Transfer, right of accused to.

28 ALL. 212-428 B:—See.

Section 192.

27 CAL. 798-130 B:—Judicial enquiry

CRIMINAL PROCEDURE CODE.—

[Contd.]

before issue of process—Legality of.

28 CAL. 709-443 B:—See.

5 O. C. 164-510 C:—Sanction for prosecution—Irregularity in granting sanction—Notice to accused before sanctioning his prosecution.

23 CAL. 442-373 A:—Sanction for prosecution—Preliminary enquiry.

30 CAL. 449-456 A:—See.

19 ALL. 249-367 A:—Transfer of Criminal case by the High Court to the Court of a District Magistrate.

24 ALL. 151-464 A:—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.

31 CAL. 350-503 D:—Transfer—Security to keep the peace—Jurisdiction of Magistrates—Proceedings, initiation of.

26 ALL. 514-521 B:—See.

Section 195.

23 BOM. 50-397 E:—Sanction to prosecute—Revision—Session Judge's power to review his order in proceedings taken to revoke sanction.

23 MAD. 223-405 A:—Intentionally giving false evidence at a judicial proceeding.

27 CAL. 820-430 C:—See.

30 CAL. 285-453 F:—See.

21 MAD. 124-389 F:—Whether High Court in revision can revoke an order of a Subordinate Court.

23 MAD. 205-408 D:—Order by Deputy Magistrate sanctioning prosecution—Jurisdiction of Sessions Court to interfere.

25 ALL. 234-495 D:—Order framed in the alternative held to be bad—Revision.

28 CAL. 434-440 D:—Offences committed before Court of Session.

25 BOM. 151-472 C:—Defamation of

CRIMINAL PROCEDURE CODE.—

[Contd.]

wife—Complaint by husband—aggrieved party.

26 MAD. 656-491 B:—Appeal to a Magistrate who has been directed and empowered to hear Appeals.

25 ALL. 534-497 A:—Question whether accused is prejudiced by alteration.

28 CAL. 217-437 A:—Attachment of crops in execution of a certificate under Public Demands Recovery Act.

4 O. C. 127-508 B:—Police enquiry into complaint—Order by Magistrate.

5 O. C. 46-510 A:—Sanction for prosecution—Offence in relation to future proceedings in Court—Prosecution for.

5 O. C. 164-510 C:—Sanction for prosecution—Irregularity in granting sanction.

5 O. C. 240-512 A:—Prosecution for making a false charge.

(See also Sanction for prosecution.)

27 MAD. 124-493 B:—Power of Superior Court to revoke sanction after complaint lodged.

25 ALL. 126-494 C:—Revision—Independent application subsequently made to the Sessions Judge.

26 BOM. 785-478 B:—Practice—Procedure—Sanction to prosecute—Stay of criminal proceedings.

27 BOM. 130-478 D:—Jurisdiction of Small Cause Court to revoke the sanction.

30 CAL. 415-455 A:—See.

25 MAD. 671-480 B:—Sanction to prosecute.

25 ALL. 234-495 D:—Sanction to prosecute—Revision.

26 MAD. 116-482 B:—Petition to revoke sanction.

30 CAL. 905-500 D:—Sanction to prosecute—Public servant—Substantive offences.

26 MAD. 137-484 C:—Prosecution—Proceeding in Court outside jurisdiction

CRIMINAL PROCEDURE CODE.—

[Contd.]

of Sessions Judge—Legality.

26 MAD. 189-485 B:—Competency of Court to question propriety of sanction.

26 MAD. 190-455 C:—Computation of the period of six months—Starting point

26 MAD. 193-485 E:—Grant of sanction to prosecute.

27 MAD. 54-492 C:—Sanction—Notice to accused.

26 MAD. 480-489 B:—Application for extension of time—good cause—Sanction for prosecution.

26 MAD 592-490 A:—Sanction to prosecute—Notice to accused—Necessity.

31 CAL. 664-554 C:—Sanction.

31 CAL. 811-556 A:—Sanction.

32 CAL. 469-561 D:—See.

32 CAL 180-585 D:—See.

32 CAL 351-560 E—See.

8 O. C. 313-579 B:—See.

27 ALL. 292-522 E:—See.

28 ALL. 142-527 B:—See.

28 ALL. 554-593 A:—See.

33 CAL. 193-569 B:—See.

29 MAD. 122 539 A:—Appeal against order of District Court granting sanction.

29 MAD. 149-540 A:—Want of sanction.

32 CAL. 379-586 A:—See.

26 ALL. 244-591 B:—See.

Section 196.

25 BOM. 90-472 B:—Sanction to prosecute—joinder of charges—Trial for more than one offence.

25 BOM. 151-472 C:—Complaint by husband—Defamation of wife—aggrieved party.

27 MAD. 54-492 C:—Sanction—Notice to accused.

Section 197.

30 CAL. 927-501 E:—Sanction to prosecute—Administrator to estate of deceased

CRIMINAL PROCEDURE CODE.—

[Contd.]

ed person—Public servant.

27 MAD. 54-492 C:—Sanction—Notice to accused—Reference to High Court.

30 CAL 905-500 D:—Sanction to prosecute—Public servant—Substantive offence.

Section 198.

26 CAL. 336-416 B:—Bigamy—Complaint by the husband—"Person aggrieved."

26 MAD. 743-482 B:—Defamation of Subordinate officers of municipality.

25 BOM. 151-472 C:—Defamation of wife—Complaint by husband—"aggrieved party."

25 ALL. 132-495 A:—Bigamy—Prosecution started at the instance of the second husband's brother—"Person aggrieved."

25 ALL. 209-495 C:—Jurisdiction—Complaint.

25 ALL 534-497 A:—Question whether accused is prejudiced by alteration.

32 CAL. 425-561 A:—Defamation.

Section 199.

25 BOM. 151 472 C:—Defamation of wife—Complaint by husband—"Aggrieved party."

27 MAD. 61-493 A:—Charge of kidnapping and conviction for enticing a married woman.

30 CAL. 910 501 A:—"Complaint"—Meaning of—Prosecution for adultery or enticing away a married woman.

29 CAL. 415 448 C:—See.

31 BOM. 218-553 B:—See.

Section 200.

18 ALL 221-363 B:—Examination of the complainant.—Complainant merely called upon to attest complaint in writing.

30 CAL. 923-501 D:—Complaint, dismissal of complaint—Complainant, examination of—False charge.

CRIMINAL PROCEDURE CODE.—

[Contd.]

29 CAL. 410-448A :—Complaint to Police—Case ordered to be entered as true by Magistrate—Judicial enquiry.

Section 202.

20 MAD. 387-358A :—Reference of cases to the Police for enquiry.

27 CAL. 798-430 B :—See.

24 CAL. 167-376F :—Disqualification of Magistrate to try the case.

4 O. C. 127-508 B :—Complaint, dismissal of, without examining complainant—Sanction to prosecute.

30 CAL. 923-501 D :—Complaint, dismissal of—Complainant, examination of—False charge.

27 CAL. 921-432B :—See.

29 CAL. 410 448A :—Complaint to Police—Case ordered to be entered as true by Magistrate—Right of complainant to be examined and to have his case tried.

Section 203.

20 MAD. 388 358B :—The Magistrate is bound to examine the witnesses tendered by the complainant and cannot acquit the accused on consideration of the complainant's statement alone.

30 CAL. 923-501 D :—Complaint, dismissal of—Complainant, examination of—False charge.

27 CAL. 798-430 B :—See.

27 CAL. 921-132B :—See.

24 CAL. 286-377 A :—Where an original complaint is dismissed a fresh complaint cannot be entertained unless the order of dismissal is set aside.

23 CAL. 983-376 B :—Complaint, Dismissal of—Revival of proceedings.

24 CAL 286-377A :—Conviction on a fresh complaint is bad in law.

29 CAL. 457-449 B :—Institution of complaint—Complainant accusing several persons—Proceeding against one and refusal of Magistrate against others.

22 ALL. 106-459A :—When a compe-

CRIMINAL PROCEDURE CODE.—

[Contd.]

tent tribunal has dismissed a complaint, another tribunal of the same powers cannot re-open it.

27 CAL. 658-428B :—See.

27 CAL. 126-419 D :—High Court's power of revision—Order for further inquiry.

✓ 29 ALL. 7-532A :—See.

28 MAD. 255-536 A :—See.

✓ 29 MAD. 126-536A :—Dismissal no bar.

33 CAL. 1282-573A :—See.

Section 204.

27 CAL. 798-430 B :—District Magistrate, power of to pass order in cases before Subordinate Court without transfer to his own Court.

Section 205.

27 CAL. 985-433 D :—Institution of complaint and necessary preliminaries—Non-attendance on service of summons—Appearance by Mukhtear.

Section 206.

26 ALL. 564-521 E :—See.

Section 208.

20 ALL. 264-371 H :—Duty of Magistrate enquiring into a case triable by the Court of Sessions to take the evidence of the witnesses produced by the accused.

26 ALL. 177-497 E :—Duty of Magistrate enquiring into a case triable by the Court of Sessions to summon and examine witnesses asked for by the accused.

Section 209.

23 MAD. 636-406 C :—Charge of theft—Maintainability of charge.

27 BOM 84-478 C :—Sufficient ground for committing for trial, what is—Jurisdiction—Revisional jurisdiction of High Court.

28 CAL. 397-439 D :—Accused, improper discharge of.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 210.

19 ALL. 502-668 B:—Right of accused to have witnesses summoned in his defence when he has refused to give in list in the Magistrate's Court.

Section 212.

18 ALL. 380-364 D:—Examination by Magistrate of witnesses named for the defence.

Sections 213, 214 & 215.

31 CAL. 1-502 B:—Presidency Magistrate—Power of, to enquiry into a case committed by coroner.

Section 215.

27 MAD. 54-492 C:—Sanction—Notice to accused—Reference to High Court.

29 CAL. 412-448 B:—See.

30 MAD. 224-575 E:—See.

Sections 221 & 222

26 CAL. 560-416 D:—Criminal breach of trust by Public servant.

29 MAD. 558-542 B:—See.

30 BOM. 49-550 A:—Successive breaches of trust.

24 ALL. 254-464 C:—Criminal breach of trust—Charge—Criminal Procedure.

Section 222 A.

26 CAL. 560-416 D:—Criminal breach of trust by public servant.

31 CAL. 928-556 D:—Criminal breach of trust.

Section 227.

29 CAL. 415-448 C:—Complaint—Rape—Adultery—Committal of accused on charge of rape.

31 BOM. 218-553 B:—See.

32 CAL. 22-558 B:—Charge.

29 MAD. 569-543 B:—See.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 228.

31 BOM. 218-553 B:—See.

Section 230.

30 CAL. 905-500 D:—Sanction to prosecute—Public Servant—Substantive offence.

Section 232.

29 CAL. 481-449 D:—Accused—Offence triable as a warrant case—Conviction of offence triable as a Summary case.

30 CAL. 288-454 A:—Roiting, charge of—Conviction of house trespass and hurt, legality of.

Section 233.

28 CAL. 7-435 A:—See.

28 CAL. 10-435 B:—See.

28 CAL. 104-436 B:—See.

29 CAL. 381-446 D:—Witness examined by court—Opportunity to accused to cross-examine.

29 BOM. 449-549 A:—See.

33 CAL. 292-570 A:—See.

Sections 233 & 234.

27 BOM. 35-479 A:—Number of charges—Same transaction.

26 MAD. 125-483 D:—Misjoinder of charges—Objection first taken on appeal.

26 ALL. 195-498 D:—Charge not distinguishing separate offences alleged against accused—Charge held to be bad in law.

26 MAD. 426-491 C:—Misjoinder of Charges—Objection first taken on appeal.

Sections 234.

24 ALL. 254-464 C:—Criminal breach of trust—Charge.

27 ALL. 69-592 C:—Charge for criminal misappropriation.

Section 235.

25 BOM. 90-472 B:—Joinder of charges trial for more than one offence.

CRIMINAL PROCEDURE CODE.—

[Contd.]

26 MAD. 125-483 D:—Misjoinder of charges—Objection first taken on appeal.

26 MAD. 454-487 A:—Private defence—Unlawful assembly.

31 CAL. 1053-558 A:—Joint trial.

31 CAL. 1007-557 C:—Joint trial.

Section 235.

26 MAD. 126-491 C:—Misjoinder of charges—Objection first taken on appeal.

29 CAL. 385-446 C:—See.

Sections 236, & 237.

26 CAL. 863-419 A:—Power of Appellate Court to alter charge or finding.

26 MAD. 1592-490 A:—Joinder of offences and accused—Preliminary enquiry.

Section 238.

27 MAD. 61-493 A:—Charge of kidnapping and conviction for enticing married woman.

29 CAL. 415-448 C:—See.

31 BOM. 218-553 B:—See.

Section 239.

28 CAL. 10-435 B:—Criminal Proceedings—Irregularity in proceedings—Misjoinder of parties.

28 CAL. 104-436 B:—Criminal Proceedings—Misjoinder of parties.

29 CAL. 385-446 C:—Joint trial—Several persons—Offences not committed in the same transaction—Irregularity.

33 CAL. 1256-572 A:—Joint trial.

Section 242.

29 CAL. 481-449 D:—Accused—Offence triable as a warrant case—Conviction of offence triable as a summons case—Absence of charge—Conviction, legality of—Material error.

Section 244.

30 CAL. 121-453 E:—Process—Pro-

CRIMINAL PROCEDURE CODE.—

[Contd.]

cess to compel attendance of witness, issue of—Refusal to compel attendance of such witness—Magistrate, discretionary power of—Summons case.

Section 243, 252.

29 MAD. 372-541 D:—Trial of a warrant case as a summons case, not a mere irregularity.

Section 248.

22 BOM. 711-392 D:—Effect of previous discharge of accused—Criminal Procedure.

Section 250.

26 CAL. 181-415 D:—It is improper to award compensation and also to sanction the prosecution of the complainant.

29 CAL. 479-449 C:—See.

25 BOM. 48-472 A:—Application for an order that a person should give security to keep the peace.

28 ALL. 625-531 C:—Frivolous complaint.

26 BOM. 150-475 E:—Complaint—Report of Police-officer—Complaint by a Police officer in a non-cognizable case—False complaint.

25 MAD. 667-480 A:—Order awarding compensation—Validity.

26 MAD. 127-484 A:—Sentence of imprisonment on non-production of sureties and on complainant's plea of inability to pay—Legality.

27 MAD. 59-492 D:—Order for compensation.

26 ALL. 183-498 A:—Compensation for frivolous or vexatious complaint.

28 CAL. 164-436 C:—Compensation—Order of payment of.

25 ALL. 315-436 D:—Frivolous accusation.

28 CAL. 251-437 B:—Compensation—False case.

26 ALL. 512-521 A:—See.

29 ALL. 137-522 E:—See.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 252.

28 CAL. 211-436 D:—Complaint, dismissal of.

Section 253.

21 ALL. 265-458 B:—Duty of Magistrate in dealing with the evidence produced in a case triable by a Court of Sessions.

30 CAL. 693-500A:—Transfer—Withdrawal of case by District Magistrate.

28 CAL. 211-436 D:—Complaint, dismissal of.

Section 254.

24 CAL. 429-378 E:—Power of commitment to Sessions—Magistrate.

29 CAL. 481-449 D:—See.

Section 257.

26 BOM. 418-476 C:—Security for good behaviour—Witness—Magistrate.

28 CAL. 594-442 B:—See.

Section 259.

28 CAL. 102 436 A:—Dismissal of complaint by District Magistrate—Revival of, and further enquiry into case by same Magistrate.

28 MAD. 310-537 B:—Absence of complaint.

Section 260.

19 MAD. 269-353 F:—Record in Summons case.

22 MAD. 459-401 G:—See.

29 CAL. 409-447 D:—Summary trial, —complaint disclosing facts constituting offence of a graver nature.

Section 269.

23 MAD. 632-406 B:—Order directing trial by jury—Revocation of order—Omission to take objection before finding recorded.

25 BOM. 680-474 D:—Trial by Jury—Appeal on a matter of fact—Practice—Procedure.

26 MAD. 598-490 B:—Opinion of only two jurors taken as Assessors on Second charge—Validity.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section, 274 451 (6).

26 ALL. 211-519 C:—See.

Sections 284 & 285.

21 ALL. 106-456 B:—"Public Servant"—Manager, employed under the Court of Wards.

25 BOM. 694-475 A:—Trial with the aid of one assessor only—Legality of such trial—Assessors.

Section 285.

21 ALL. 106-456 B:—Assessors—Effect of incapacity of assessors to understand the proceedings.

Sections 287 & 289.

1 O. C. 85-505 C:—Trial before Court of Sessions.

Section 288.

27 CAL. 295-422 E:—Evidence in criminal case—Reference to High Court.

31 CAL. 142-502 C:—Trial by jury—Evidence—Previous statement.

21 ALL. 111-456 E:—Evidence—Use in Sessions Court of evidence taken before the committing Magistrate.

22 ALL. 445-460 F:—Previous statement to Committing Magistrate retracted in Sessions Court.

21 ALL. 175-457 D:—Admissibility of evidence—Statement of approver made before Committing Magistrate and afterwards retracted in the Court of Sessions.

28 ALL. 683-531 E:—Statements retracted.

Section 289.

1 O. C. 84-505 B:—Dacoity—No evidence—Examination of accused.

Section 292.

30 BOM. 421-551 C:—Right of reply.

Sections 297 & 298.

25 CAL. 561-386 D:—Effect of omission to explain the law to jury.

CRIMINAL PROCEDURE CODE.—

[Contd.]

29 CAL. 379-443 A:—Misdirection—Charge to jury—Duty of Judge to explain law—Law explained to jury by pleaders on both sides.

29 CAL. 782-452 A:—Misdirection—Charge to Jury—Duty of Judge—Evidence of approver.

30 MAD. 44-543 C:—See.

Sections 300, 301 & 303.

30 CAL. 495-498 E:—Delivery of verdict—Verdict, partial record of—Prejudice—New trial.

Sections 303, 304.

28 BOM. 412-575 B:—Jury.

32 CAL. 759-662 E:—Thumb-mark.

Section 307.

23 BOM. 696-469B:—Trial by jury of an offence triable with the aid of Assessors—Practice.

28 CAL. 367-439D:—Accused, improper discharge of—Power of Sessions Judge and District Magistrate to order commitment.

29 CAL. 128-444 A:—Jury—Verdict of jury—Disagreement with, by Judge—Reference to High Court.

29 CAL. 483-450A:—Witnesses, statement of—Police investigation—Power of Magistrate to record statement not voluntarily made.

30 MAD. 134-544 C:—See.

29 MAD. 91-538B:—Opinion of Jury.

Section 309.

26 MAD. 598-490B:—Opinion of only two jurors taken as assessors on second charge—Validity.

Section 337.

23 BOM. 493-468C:—Pardon tendered to one of the accused—Approver.

23 BOM. 213-466D:—Accused person

CRIMINAL PROCEDURE CODE, —

[Contd.]

calling as witnesses, persons charged with him and awaiting a separate trial for same offence.

25 BOM. 422-473 C:—Withdrawal of prosecution—Discharge.

29 CAL. 782-452 A:—See.

25 BOM. 675-474 C:—Pardon tendered and accepted—Evidence given and pardon withdrawn by Magistrate.

3 O. C. 191-506 D:—Pardon Revocation of—Power of Court tendering pardon.

30 BOM. 611-552B:—See.

Section 339.

24 CAL. 492-379A:—Withdrawal of conditional Pardon.

24 ALL. 529-398E:—Pardon by Magistrate enquiring into a criminal case.

25 BOM. 675-474C:—Pardon tendered and accepted—Evidence given and pardon withdrawn by Magistrate.

Section 340.

25 ALL. 375-496 F:—Security for good behaviour—Reference to the Sessions Judge.

27 CAL. 656 428A:—Security for good behaviour—Imprisonment in default—Reference to Sessions Judge.

23 CAL. 709-443B:—See.

Section 340 & 341.

23 CAL. 493-313 B:—“Accused”—Meaning of—Right to be heard.

21 ALL. 109-456D:—Jurisdiction of Magistrate to hold preliminary enquiry not ousted.

25 ALL. 375-496 F:—Security for good behaviour—Reference to the Sessions Judge.

Section 342.

26 CAL. 49-415 B:—Evidence in criminal case.

1 O. C. 84-505 B:—Examination of accused.

27 MAD. 238-533 C:—See.

CRIMINAL PROCEDURE CODE.—

[Contd.]

10 O. C. 112-582 C:—See.

27 CAL. 295-422 B:—Evidence in Criminal Case—Trial by jury—Duty of Judge—Reference to High Court.

25 CAL. 689-143 A:—See.

19 ALL. 200-366 F:—False statement made by a convict in an affidavit in support of an application for revision of the order by which he was convicted.

20 ALL. 426-398 A:—Evidence—accused persons under trial separately for a substantive offence and for abetment of that offence.

23 CAL. 493-373. B:—"Accused," meaning of—Right to be heard.

1 O. C. 85-505 C:—Acquittal without taking the whole evidence tendered by prosecution.

21 ALL. 107-456 C:—Security for good behaviour—Power to order further enquiry.

28 BOM. 129-504 B:—Keeping a common gaming-house—Delay in executing the warrant.

Section 342 cl. (4).

23 BOM. 213-466 D:—Witness—Accused person calling as witnesses persons charged with him and awaiting a separate trial.

28 CAL. 709-413 B:—See.

Section 344.

19 MAD. 375-454 E:—Witness committed for trial for offence—Incompetence of Jurors.

Section 345.

25 BOM. 151-472 C:—Defamation of wife—Complaint by husband—"aggrieved party."

Section 349.

26 ALL. 344-520 A:—See.

Section 350.

21 MAD. 246-390 A:—Bench of Magistrates.

25 CAL. 863-399 F:—Witness, Right of accused to have witnesses re-sum-

CRIMINAL PROCEDURE CODE.—

[Contd.]

moned and re-heard.

28 BOM. 50-475 D:—Sessions Judge—Magistrate—Trial—Evidence recorded partly by another Judge.

Section 355.

19 MAD. 269-353 F:—Record in summons case.

30 CAL. 508-499 A:—Witness, attendance of—Process—Refusal to issue—Magistrate, discretion of—High Court, power of interference.

Section 356.

30 CAL. 508-499 A:—Witness, attendance of—Process, refusal to issue—Magistrate, discretion of—High Court, power of interference.

6 O. C. 73-515 A:—Evidence not recorded in language of Court amounts to irregularity of proceeding.

Section 362.

33 CAL. 1036-572 B:—See.

Section 363.

21 ALL. 189-457 F:—Summary trial—Matters necessary to be stated in the record of a summary trial.

Section 364.

21 BOM. 495-360 A:—Evidence—Confession—Statement of prisoner made before enquiry.

23 BOM. 221-466 E:—Confession—Confession not signed by the accused—Admissibility of such confession.

22 ALL. 115-459 C:—False evidence—Statement made in the course of a "judicial proceeding."

27 CAL. 295-422 E:—Impropriety of taking down statements of persons immediately before their arrest.

23 BOM. 213-466 D:—Witness—Accused persons calling as witnesses charged with him and awaiting a separate trial for the same offence.

10 O. C. 112-582 C:—See.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Sections 366 & 367.

23 CAL. 502-373 E:—Pronouncing a sentence before writing judgment—Irregularity.

27 MAD. 237-533B:—See.

Section 367.

23 CAL. 240-372 C:—“Screening an offender”—Judgment—Form of Judgment.

19 ALL. 506-368 C:—Judgment of Appellate Court—What such judgment contains.

23 CAL. 502-373 E:—Pronouncing sentence before writing judgment—Irregularity.

21 ALL. 177-457E:—Finality of order of the High Court—Judgment or order not complete until sealed.

Section 369.

28 CAL. 102-436 A:—See.

Section 370.

31 CAL. 983-557 A:—Presidency Magistrate.

27 CAL. 131-420 A:—Breach of contract by workmen—trial Procedure.

27 CAL. 461-426 A:—Presidency Magistrate—Judgment of—Sentence of imprisonment—reasons for convictions to be recorded.

Section 386.

19 MAD. 238-353B:—Cattle-Trespass Act—No appeal.

28 CAL. 164-436C:—Compensation recoverable as fine.

Sections 387 & 389.

28 CAL. 164-436C:—See.

Section 338.

26 MAD. 127-484A:—Compensation in respect of vexatious complaint.

28 CAL. 164-436 C:—See.

Section 391.

26 MAD. 1465-487D:—Sentence of whipping by second-class Magistrate—Appeal.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 395.

21 ALL. 25-399A:—Whipping—Sentence of imprisonment in lieu of whipping—Powers of Magistrate.

20 ALL. 1-369B:—Pardon—Tender of pardon by Magistrate having power but not being the Magistrate before whom the enquiry was being held.

Section 399.

25 CAL. 333-383B:—Effect of the repeal of a repealing statute—Construction of statute.

Section 304.

28 CAL. 211-436D:—See.

29 CAL. 412-448B:—Magistrate... Conviction—Offence exclusively triable by Court of Session.

28 ALL. 313-529 B:—Previous conviction.

Section 406.

2 O. C. 307-505E:—Confirmation by Sessions Judge of Deputy Magistrate's order.

Section 407.

26 MAD. 465-487D:—Power of Appellate Court to deal with the case.

26 MAD. 656-491B:—Refusal to accord Sanction.

Section 408, 435.

30 MAD. 136-544D:—See.

Section 417.

20 ALL. 495-398C:—Appeal by Government from an acquittal on the same footing as an appeal from conviction.

Section 418.

26 MAD. 243-485F:—Trial by jury for offence triable by jury—Verdict of acquittal.

27 BOM. 626 503E:—Charge to Jury—Sessions Judge—Misdirection—Inadmissible evidence.

25 BOM. 680-474D:—Offence triable with the aid of assessors tried in fact by a Jury—Trial by a Jury—Appeal on a matter of fact.

Section 421.

20 BOM. 540-359C:—Judgment, re-

CRIMINAL PROCEDURE CODE.—

[Contd.]

jecting an appeal, need not be in writing.

32 CAL. 178-559C:—See.

39 MAD. 236-641A:—See.

Section 423.

23 CAL. 975-376 A:—Power of the Appellate Court, altering a finding of acquittal into one of conviction.

23 ALL. 497-463 C:—Alteration of Sentence in appeal—Enhancement.

27 CAL. 990-434A:—See.

27 BOM. 84-478 C:—Presidency Magistrate—Discharge of accused person—Order of Discharge set aside by High Court and order made that accused be arrested.

26 MAD. 1-481 A:—Trial by Jury—Misdirection—Verdict—Order of acquittal.

26 MAD. 451-486 C:—Conviction of two accused and order against both accused to pay Court and Process fees in equal shares.

26 MAD. 478-489 A:—Power to reverse the finding and sentence—Reversal by Deputy Magistrate of an order acquitting accused on a charge of theft.

30 MAD. 103-541 B:—See.

30 MAD. 228-576 B:—See.

29 MAD. 331-541 C:—See.

33 CAL. 295-570 B:—Rioting.

27 CAL. 172-421 C:—Power of Appellate Court to order a retrial.

24 CAL. 523-879 D:—Criminal, dismissal of—Revival of proceedings—Right of appeal.

30 CAL. 288-454 A:—Rioting, charge of, conviction—Appeal—Conviction of house-tresspass and hurt, legality of.

29 CAL. 393-447 C:—Security for keeping the peace—Order—Omission of express finding as to commission of offence within the section—Illegality.

CRIMINAL PROCEDURE CODE.—

[Contd.]

26 CAL. 746-418 A:—Revision—High Court's power of revision—Presidency Magistrate—Proceedings of—Order for further inquiry.

23 BOM. 439-467 C:—Appellate Court—Powers of Appellate Court to enhance sentence.

29 CAL. 412-448 B:—See.

27 CAL. 175-422 B:—Enhancement of sentence—Alteration of sentence on appeal.

28 CAL. 104-436 B:—See.

18 ALL. 301-363 D:—Enhancement of Sentence—Power of Appellate Court.

27 CAL. 660-428 C:—Theft, charge of—Conviction—Appeal—Conviction of offence of different character.

25 CAL. 711-387 D:—Power of Appellate Court to deal with the case.

30 CAL. 322-500 C:—Charges, misjoinder of—Defective charge—Appeal—Trial by jury—Forgery—Using as genuine a forged document.

23 BOM. 439-467 C:—Appellate Court—Powers of Appellate Court to enhance sentence—Sentence—Alteration of sentence.

25 ALL. 534-497 A:—Question whether accused is prejudiced by alteration—Powers of Appellate Court.

27 BOM. 551-503D:—Medicated article—Intoxicating drug.

27 BOM. 626-503 E:—Charge to jury—Sessions Judge—Misdirection—Inadmissible evidence.

Section 423 cl. [d].

29 CAL. 724-451 D:—Immoveable property—Possession—Order by Subordinate Magistrate restoring—Appeal—Jurisdiction—Magistrate of first class specially empowered to hear appeals.

30 CAL. 101-453A:—Order for security for keeping the peace on conviction—Appeal—Appellate Court, Power of, to set aside such order.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 421.

23 CAL. 420-372 C:—"Screening an offender"—Judgment—Form of judgment.

19 ALL. 506-368 C:—Judgment of Appellate Court—What such judgment must contain.

Section 433.

27 CAL. 572-424 D:—Appeal in criminal case—Taking of additional evidence by appellate Court—Dismissal of appeal.

31 CAL. 710-555 B:—Extortion.

Section 429.

27 CAL. 501-426 B:—Summary trial—Dispute as to possession of land.

27 CAL. 892-431 A:—Land ownership of, dispute as to—Zemindars and tenants *vs.* rival Zemindars and tenants.

Section 432.

29 CAL. 439-450 B:—See.

Section 435.

26 CAL. 188-415 E:—Superintendence of High Court—Power of revision by High Court—Order concerning a ferry.

26 ALL. 144-497 D:—High Court's powers of revision.

28 CAL. 416-440 B:—Immoveable property, dispute as to.

25 ALL. 537-497 B:—Order of Magistrate on dispute as to possession of immoveable property—Revision—Jurisdiction of High Court.

24 BOM. 471-471 C:—High Court's criminal revisional jurisdiction over the Consular Court—Order in Council.

24 ALL. 846-465 B:—Practice—Revision—Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.

24 BOM. 471-471 C:—See.

2 O. C. 307 505 E:—Confirmation of Deputy Magistrate's order by Sessions Judge—Appeal.

CRIMINAL PROCEDURE CODE.—

[Contd.]

24 BOM. 527-471 D:—Dispute about right to perform service in a public temple—High Court's criminal revisional jurisdiction.

26 MAD. 477-483 E:—Refusal by Sessions Judge to commit for trial—Subsequent commitment by District Magistrate after taking up the case *suo motu*.

26 MAD. 41-482 A:—Petition of complaint for re-trial of accused after discharge.

4 O. C. 96-507 E:—Criminal revision.

26 MAD. 137 484 C:—Order by Sessions Judge staying proceedings pending reference to the High Court.

26 MAD. 139-484 D:—Jurisdiction of High Court to revise order according sanction which has been granted by a Civil Court.

23 MAD. 225-405 B:—Fresh inquiry after improper discharge of accused persons—Jurisdiction of Sessions Judge after acquittal.

5 O. C. 1-509 B:—Criminal revision—Revision, High Court's powers of.

28 CAL. 709-443 B:—See.

29 CAL. 382-446 B:—Attachment of Property by Magistrate—Order relating to the management of such property—Interference by High Court Jurisdiction.

30 CAL. 449-456 A:—Jurisdiction, transfer of criminal case to a Subordinate Magistrate—District Magistrate power of, to pass order relating to a case not on his own file.

Sections 435 & 437.

4 O. C. 119-508 A:—Criminal revision—Application for revision to District Magistrate after its rejection by Sessions Judge—Jurisdiction—Order for further enquiry.

32 CAL. 1090-566 B:—District Magistrate.

Sections 435 439.

28 BOM. 533-545 D:—False Evidence.

29 ALL. 24-532 B:—See.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 436.

27 MAD. 54-492C:—Sanction—Notice to accused.

28 CAL. 211-436D:—See.

28 CAL. 397-439D:—See.

30 MAD. 224-575E:—See.

Section 437.

24 ALL. 148-463 E:—Security for good behaviour...Power of District Magistrate to reopen proceedings on the same record after discharge of the persons called upon to show cause by Magistrate of the first class.

24 CAL. 395-378 D:—Obstruction to Public thoroughfare.

29 CAL. 457-449 B:—See.

25 CAL. 425-384 C:—Order of removal of Burning Ghat—Form of notice.

26 MAD. 41-482 A:—Petition by complainant for retrial of accused after discharge—No notice to accused.

20 ALL. 339-372 A:—Order for further inquiry—Notice to show cause.

21 ALL. 107-456 C:—Security for good behaviour—Power to order further inquiry.

27 CAL. 658-425 B:—Accused, conviction of—Further inquiry—offence not charged—Other persons not before Magistrate.

27 CAL. 662-428 D:—Proceedings for taking security for good behaviour—Discharge of persons called upon—Further enquiry.

2 O. C. 363-506 A:—Discharge, order of—Further inquiry.

24 ALL. 148-463E:—See.

28 CAL. 102-436A:—See.

28 CAL. 211-436 D:—Complaint dismissal of.

28 CAL. 397-439 D:—See.

28 CAL. 709-443 B:—See.

28 ALL. 268-528D:—Revision.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 438.

24 ALL. 346-465 B:—Revision—Reference by District Magistrate recommending the reconsideration of an order of acquittal.

25 ALL. 128-494 D:—Revision—Practice...Reference by District Magistrate questioning an order of acquittal.

28 CAL. 217-437 A:—Want of sanction not occasioning failure of justice.

29 CAL. 491-450 C:—See.

28 ALL. 91-526E: See.

Section 439.

24 CAL. 528-379 D:—Criminal, dismissal of—Revival of proceedings—Right of appeal.

24 BOM. 527-471 D:—Dispute about right to person service in a public temple—High Court's criminal revisional jurisdiction.

27 CAL. 126-419 D:—High Court's power of revision—Presidency Magistrate.

27 CAL. 501-426 B:—See.

23 ALL. 249-462 D:—Revision—Power of High Court to revise an order—Circumstances under which such power should or should not be exercised.

24 ALL. 346-465 B:—Practice—Revision—Reference by District Magistrate recommending the reconsideration of an order of acquittal.

26 BOM. 785-478 B:—Stay of criminal proceedings pending disposal of civil suit—High Court—Revision.

27 BOM. 84-478 C:—Sufficient ground for committing for trial—Order of discharge set aside by High Court—Order made that accused be arrested and committed for trial.

26 MAD. 98-483 A:—Jurisdiction of High Court to interfere when a Court has taken action.

27 CAL. 820-430 C:—See.

26 MAD. 139-484 D:—Jurisdiction of High Court to revise order according

CRIMINAL PROCEDURE CODE.—

[Contd.]

sanction which has been granted by a Civil Court.

28 CAL 709-443 B:—See.

29 CAL. 491 450 C:—Building-Commencement of second story to House—Re-building house.

23 ALL. 249 462 D:—See.

7 O. C. 51-517 A:—See.

7 O. C. 68-517 B:—See.

31 CAL. 42-574 A:—See.

Section 439, 476.

26 ALL. 249-591 C:—See.

Section 451.

24 ALL. 511-466 B:—Right of a European British Subject to be tried by a Jury.

29 CAL. 128-444 A:—See.

Section 471.

28 CAL. 434-440 D:—See.

Section 476.

27 CAL. 820-430 C:—See.

21 MAD. 124-389 F:—Whether a High Court in revision can revoke an order of a Subordinate Court.

26 CAL. 869-419 B:—Obstruction to a public way—Jury—Verdict on inspection of locality without taking evidence.

23 MAD. 225-405 B:—Fresh enquiry after improper discharge of accused person—Jurisdiction of Sessions Judge after acquittal.

23 ALL. 249-462 D:—Revision—Power of High Court to revise an order—Circumstances under which such power should or should not be exercised.

26 BOM. 785-478 B:—Stay of criminal proceedings pending disposal of Civil Suit—High Court—Revision.

25 MAD. 659-479 D:—Record of case called for by District Magistrate in his executive capacity.

5 O. C. 46-510 A:—Sanction for prosecution—Offence in relation to future proceedings in Court—Prosecution for.

26 MAD. 98-183 A:—Jurisdiction of

CRIMINAL PROCEDURE CODE.—

[Contd.]

High Court to interfere when a court has taken action.

27 CAL 921-432 B:—See.

25 ALL. 231-495 D:—Sanction to prosecute—Order directing prosecution.

4 O. C. 96-507 E:—Application for revision.

4 O. C. 127-508 B:—Police enquiry in to complaint—Order by Magistrate.

31 CAL. 664-554 C:—Sanction.

34 CAL. 42-574 A:—See.

27 ALL. 339-523 F: Revision.

27 ALL. 468-524 C:—Delay in applying for revision.

27 ALL. 415-524 B:—See.

27 ALL. 397-521 A:—See.

29 BOM. 575-549 B:—Transfer of case to High Court.

32 CAL. 367-560 F:—See.

33 CAL. 30-567 C:—False charge.

29 MAD. 831-541 C:—See.

29 MAD. 100-538 D:—See.

34 CAL. 551 536 C:—See.

Sections 477 & 478.

31 CAL. 1-502 B:—Presidency Magistrate, power of, to enquire into a case committed by the Coroner.

Section 487.

20 MAD. 383-357 G:—Judicial proceedings.

27 CAL 452-425 B:—Information by accused of offence—Report by a police of falsity of information—Sanction by District Magistrate on police report.

Section 488.

24 CAL. 638-380 A:—Maintenance—Complaint by a wife against her husband for maintenance.

19 MAD. 461-355 A:—Maintenance of children—Moplas—Personal law.

22 MAD. 246-401 E:—Order for Maintenance of child—Marumakkattayan law as observed by Nayar Community.

CRIMINAL PROCEDURE CODE—
[Contd.]

20 MAD. 470-358 G:—Maintenance—Adultery.

19 ALL. 56-365 A:—Maintenance—Plea of divorce in answer to an application for enforcement of an order for maintenance of a wife.

20 MAD. 3-356 C:—Maintenance—Sentence of imprisonment on default.

25 CAL. 291-383 A:—Maintenance—Imprisonment for default of payment of maintenance. Warrant of commitment.

23 BOM. 484-468 A :—Husband and wife—Maintenance—Order obtained by a wife against husband.

25 ALL. 165-495 B:—Maintenance—Agreement between the parties subsequent to the order for maintenance.

25 ALL. 545-497 C:—Maintenance—Application for cancelment of order for maintenance—Jurisdiction.

26 ALL 326-519 E:—See.

27 ALL. 483-524 F:—Effect of Civil Court decree.

27 ALL. 11-592A:—Maintenance of child.

Sections 488, 490.

9 O.C. 49-581A:—Effect of civil court decree on order for maintenance.

Sections 489 & 490.

25 ALL. 165-495B:—Maintenance—Agreement between the parties subsequent to the order for maintenance.

Section 494.

25 BOM 422-473 C:—Withdrawal of of prosecution Discharge—Acquittal | Evidence—Discharged persons called as witnesses.

Section 495 cl. (4).

26 BOM 533 476 D:—Police Officer investigating offence not to conduct prosecution—Procedure—Gambling.

Section 498.

31 CAL. 1-502 B:—Presidency Magistrate power of, to enquire into a case committed by the Coroner.

CRIMINAL PROCEDURE CODE—
[Contd.]

Section 503.

24 CAL. 551-379 E:—Commission to examine witness—Pardanashin lady.

Section 511.

28 CAL. 689-443A:—See.

Section 514.

30 CAL. 107-453B:—See.

26 ALL. 202-519 B:—See.

✓ *Section 517.*

22 BOM. 844-395D:—Disposal of property produced before a Court during an enquiry.

30 CAL. 690-499 D:—Restoration of property, order for.

23 BOM. 494-468 D:—Order to restore possession of immoveable property.

24 CAL. 499-379 C:—Orders as to disposal of property as to which no offence has been committed.

25 BOM. 702-475 B:—Disposal of stolen property on conviction of the thief. ✓

34 CAL. 347-575A:—See.

27 ALL. 630-526B:—Order for disposal of property the subject of a crime.

29 MAD 375-541F:—No trail.

Section 520.

30 CAL. 690-499 D:—Restoration of property, order for.

Section 522.

25 CAL. 630-387 A:—Order as to restoration of immoveable property—Jurisdiction of Appellate Court to reverse such an order.

27 CAL. 415-524 B:—See.

25 CAL. 434-384 E:—Restoration of possession of immoveable property—Dispossession by criminal force.

23 BOM. 494-468 D:—Jurisdiction of Small Cause Court to revoke sanction.

27 CAL. 174-422A:—Restoration of possession of property—Use of criminal force.

CRIMINAL PROCEDURE CODE.—

[Contd.]

25 ALL. 341-496E:—Use of criminal force.

29 CAL. 724-451D:—See.

Section 523.

✓ 23 BOM. 494-468D:—Order to restore possession of immoveable property.

Section 523 cl. (d).

✓ 24 ALL. 306-464F:—First offender—Powers conferred by Section 562 exerciseable by a Court of Appeal.

24 ALL. 306-464F:—See.

Section 524.

23 BOM. 494-468 D:—Order to restore possession of immoveable property.

Section 526.

28 CAL. 297-438A:—Transfer of criminal case—Grounds for transfer.

19 ALL. 291-367 B:—Security for good behaviour—transfer.

27 CAL. 820-430C:—See.

25 BOM. 179-473 B:—Transfer of a case—Criminal case—Bias of Judge.

28 CAL. 709-443 B:—See.

26 MAD. 188-485 A:—Jurisdiction of High Court to transfer a case pending.

3 O. C. 247-507 A:—Transfer of proceedings—Power of High Court.

31 CAL. 715-557A:—Transfer.

26 ALL. 536-521C:—See.

30 MAD. 233-576C:—See.

3 O. C. 165-583 B:—See.

28 CAL. 1183-572:—Transfer of case.

Section 526 A.

19 MAD. 365-354 E:—Witness, committed for trial for offence.

Section 526 cl. (d).

29 CAL. 211-444C:—See.

Section 527.

28 CAL. 709-443 B:—See.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 528.

22 BOM. 549-392 A:—Transfer of case—Notice to accused—Bail—Order admitting to bail not reviseable by the District Magistrate.

26 MAD. 139-484 B:—Order by Sub-Divisional Magistrate transferring a case from one Sub-Magistrate to another.

26 MAD. 396-486 B:—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a village Magistrate.

20 CAL. 693-500 A:—Transfer—Withdrawal of case by District Magistrate.

26 MAD. 394-491 D:—Power of District or Sub-divisional Magistrate to transfer a criminal case from the file of a Village Magistrate.

28 CAL. 709-443 B:—See.

30 MAD. 228-576 B:—See.

28 ALL. 331-529 C:—False evidence.

28 ALL. 421-530 D:—Transfer of case.

Section 529.

23 CAL. 442-373 A:—Power—District Magistrate to transfer cases to a Sub-ordinate—Compensation, order awarding.

20 ALL. 40-369 B:—Lender of pardon by a Magistrate having power but not being the Magistrate before whom the enquiry was being held.

Section 530.

29 CAL. 412-448 B:—See.

Section 531.

26 MAD. 640-491A:—Proceedings in a wrong place.

30 MAD. 94-544 A:—See.

Section 532.

22 BOM. 112-361 B:—Evidence—Writings showing intention or animous—Letters of contributors published in newspapers Construction—Reference to

CRIMINAL PROCEDURE CODE.—

[Contd.]

proceeding in the Legislative Council.

28 CAL. 397-439 D:—Accused—Improper discharge of—Commitment.

Section 533.

21 BOM. 495-360 A:—Evidence—Confession—Statement of prisoner made before enquiry.

23 BOM. 221-466 E:—Confession—Confession not signed by the accused—Admissibility of such confession.

10 O. C. 112-582 C:—See.

Section 536.

26 MAD. 243-485 F:—Trial by jury for offence triable by jury—Verdict of acquittal.

Section 537.

23 CAL. 983-376 B:—Complaint, dismissal of—Revival of proceedings.

5 O. C. 243-512 B:—Habitual offenders, trial of—Accused, to or more dealt with in the same inquiry.

23 CAL. 502-3:3 E:—Pronouncing sentence before writing the Judgment—Irregularity.

23 CAL. 442-373 A:—Power, District Magistrate to transfer cases to a Subordinate Magistrate—Compensation, order awarding.

25 CAL. 863-392 F:—Right of accused to have witnesses resummoned and re-heard—Refusal to re-call witnesses.

25 BOM. 694-475 A:—Trial with the aid of one assessor only—Legality of such trial—Assessors.

27 CAL. 781-429 C:—See.

28 CAL. 104-436 B:—See.

26 BOM. 533-475 D:—Police-officer investigating is not to conduct prosecution.

5 O. C. 500: Sanction for prosecution irregularity in granting sanction.

26 MAD. 1-481 A:—Trial by Jury—Misdirection—Verdict order of acquit-

CRIMINAL PROCEDURE CODE.—

[Contd.]

tal—Appeal against acquittal.

28 CAL. 7-435 A:—See.

28 CAL. 10-435 B:—See.

28 CAL. 217-437 A:—See.

29 CAL. 385-446 C:—See.

31 BOM. 218-553 B:—See.

30 MAD. 44-543 C:—See.

Section 540.

24 CAL. 167-376 F:—Police daries—Right of the accused on his agent to see the special diary.

24 CAL. 288-377 B:—Cross examination of witness called by the court.

29 CAL. 387-446 D:—See.

Sections 545 & 546.

19 ALL. 112-366 B:—Recovery of compensation from complainant—Procedure.

22 BOM. 428-391 C:—Compensation—Injury caused by the offence committed—Indirect consequences resulting from the offence.

22 BOM. 717-393 B:—Compensation—Award of compensation illegal where no fine is inflicted.

19 MAD. 1238-353 B:—Cattle trespass—No appeal.

19 ALL. 73-365 D:—Compensation for frivolous and vexatious complaint—Order in the alternative for imprisonment.

22 BOM. 934-396 B:—Compensation for vexatious complaint—Compensation illegal, where complainant is a police-officer.

26 CAL. 181-415 D:—Sanction to prosecute and award of compensation.

13 ALL. 353-364 A:—Complaint of wrongful seizure of cattle—"Offence."

Section 555.

26 MAD. 49-482 C:—Conviction of accused on charge of criminal trespass—No finding of use of criminal force.

CRIMINAL PROCEDURE CODE.—

[Contd.]

Section 556.

28 CAL. 709-443 B:—See.

22 ALL. 340-460 E:—See.

Section 557

23 BOM. 490-468 B:—Appointment of a pleader to act as a Presidency Magistrate.

Section 560.

24 CAL. 53-376 C:—Compensation to accused in a criminal case.

22 BOM. 934-396 B:—Compensation for vexatious complaint—Compensation illegal where the complainant is a police officer.

Section 562.

24 ALL. 306-464 F:—Powers conferred under this section exerciseable by a Court of appeal.

29 MAD. 567-543 A:—Power not confined to courts of first instance.

Section 593.

26 BOM. 552-477 A:—Criminal Procedure—Procedure in Magistrate's Court—Information filed against an accused—Case must be disposed of, by Magistrate.

27 CAL. 985-433 D:—Omission to refer to particular statements.

21 ALL. 109-456 D:—Cognizance taken by Magistrate does not disqualify him to hold a preliminary enquiry for committal.

23 MAD. 148-401 A:—See.

26 CAL. 786-418 C:—Magistrates, jurisdiction of—Interference by the High Court in a pending case.

18 ALL. 465-364 F:—By whom a complaint of an offence may be made.

28 CAL. 7-435 A:—Misjoinder of parties is an irregularity.

21 BOM. 536-360 C:—By whom complaint may be made in criminal trespass and mischief.

18 ALL. 221-363 B:—Omission to take sworn examination of the complainant.

CRIMINAL PROCEDURE CODE.—

[Contd.]

27 CAL. 921-432 B:—A Magistrate after examining the complainant and without hearing his witnesses for dismissing the complaint, cannot order the complainant to be prosecuted under Section 211, Indian Penal Code.

20 MAD. 79-356 H:—False charge of dacoity made to a Police officer.

22 BOM. 596-391 F:—False complaint to Police.

24 CAL. 286-377 A:—Revival of proceedings is wrong so long as the order of dismissal is not set aside by a competent authority.

24 CAL. 528-379 D:—There was no right of appeal to the Presidency Magistrate from the order of an Honorary Magistrate.

23 CAL. 983-376 B:—Witness—Cross-examination of witness called by the Court.

24 CAL. 286-377 A:—Complaint—Dismissal of complaint—Revival of proceedings—Final disposal of case—Want of Jurisdiction.

19 MAD. 269-353 F:—Recording the evidence in English by a Sub-Magistrate without authority does not vitiate the trial.

25 CAL. 863-399 F:—Right of accused to have witnesses re-summoned and re-heard.

19 MAD. 375-354 E:—Application for transfer of a case.

28 CAL. 610-374 E:—Power of the High Court to stay proceedings before Magistrate pending a Civil Suit.

22 MAD. 15-400 C:—Trial by Jury instead of assessors.

22 BOM. 711-392 D:—Practice—Procedure—Complaint of offences—Fresh complaint lodged on same charges.

22 ALL. 106-456 B:—Assessors—Effect of incapacity of assessors to understand the proceedings.

CRIMINAL PROCEDURE CODE.—

[Conld.]

27 CAL. 126-419 D:—Revision—High Courts power of revision—Presidency Magistrate, proceedings of—Order for further inquiry.

22 MAD. 459-401 G:—Exercise of summary jurisdiction, after inquiry into charge not triable summarily.

28 CAL. 7-435 A:—Misjoinder of parties is not fatal to the proceedings.

28 CAL. 10-435 B:—Criminal proceedings—Irregularity in proceedings—Misjoinder of parties—Joint trial on charges of theft and receiving stolen property.

20 MAD. 445-358 E:—Irregularity in omitting witnesses in a trial by jury.

23 BOM. 316-467 B:—Retracted by confession, admissibility of such confession without corroborative evidence—Criminal Trespass.

21 BOM. 536-360 C:—Criminal Trespass—Mischief—Who may complain.

19 MAD. 240-353 C:—Intent.

19 ALL. 74-365 E:—House trespass with intent to commit adultery.

Criminal Proceedings.

31 CAL. 858-556 B:—See.

32 CAL. 431-661 B:—Trade mark.

Cross-Examination.

24 CAL. 288-877 B:—Cross-examination of witness called by the Court.

28 CAL. 594-442 B:—The accused can get an adjournment to cross-examine the prosecution—witness.

20 ALL. 155-370 G:—Cross examination by defending counsel disallowed.

27 CAL. 370-424 C:—Cross-examination of prosecution witness before charge—Right of accused to have prosecution witnesses recalled after charge drawn up for purpose of cross-examination.

Criminal Trespass.

27 ALL. 298-523 C:—Occupation of Zemindars of house left by a deceased tenant.

Cruelty to animals.

24 CAL. 881-381 A:—Cruelty to animals, prevention of.

26 BOM. 609-177 C:—Cruelty to animals, prevention of.

Culpable Homicide.

(See cases under Murder.)

18 ALL. 497-365 A:—Grave and sudden provocation.

19 MAD. 356-354 D:—Act done with the knowledge that death would be a probable result.

28 CAL. 571-442 A:—Provocation grave and sudden.

Custody.

32 CAL. 80-559 A:—Detention.

Dacoity.

25 CAL. 711-387 D:—Charge to the Jury—Power of Appellate Court to deal with the case.

27 CAL. 139-421 A:—Evidence in criminal case—Evidence of bad character.

3 O. C. 263-507 B:—The enhanced punishment provided by Section 397 I. P. C. can be inflicted only on the person actually causing grievous hurt.

21 ALL. 263-458 A:—Commission of grievous hurt in the course of a dacoity.

3 O. C. 72-506 B:—In a dacoity case, the witness should be called on to identify each individual prisoner and the identification of each should be separately recorded.

25 BOM. 712-475 C:—Previous conviction—Sentence.

1 O. C. 84-505 B:—The Session Judge recorded the evidence of the witness for the prosecution and without examining the accused acquitted them considering there was no evidence against them. The order of acquittal was quashed on the ground that no evidence means no legal evidence or proof and not "no evidence worthy of belief."

Death by rash and Negligent Act.

32 CAL. 73-558 C:—Railway collision.

Deaf and Dumb Person.

27 CAL. 368-424 B:—A retrial was ordered when the accused could not understand the proceedings.

Deaf-Mute.

5 O. C. 246-512 C:—Signs made by a deaf-mute person are not admissible in evidence.

Deception.

32 CAL. 941-565 A:—Cheating.

Defamation.

22 ALL. 234-460 B:—Statement made in good faith for the protection of the person making it in an application to a Court is not.

30 CAL. 402-454 D:—See.

28 CAL. 63-435 C:—Necessary proof.

27 CAL. 262-422 D:—Statements made by persons in the course of their examination as witnesses.

3 O. C. 80-506 C:—The accused could not be proceeded against for defamation for a privileged statement made before the Court; but if the statement be false he can be prosecuted for giving false evidence.

35 BOM. 151-472 C:—Defamation of wife—Complaint by husband—Aggrieved party.

26 MAD. 464-487 C:—The conviction was quashed when the statement was true.

26 MAD. 43-482 B:—A complaint by the President for defamation of Subordinate officers of the Municipality was held not maintainable.

DEFAMATION—[Could.]

30 MAD. 222-575 D:—See.

32 CAL. 756-562 D:—See.

32 CAL. 425-564 A:—See.

Detention of Accused by Police.

23 BOM. 32-397 D:—A Magistrate can authorize the detention for 15 days in all.

Deposition.

31 CAL. 1050-557 D:—Before Committing Magistrate.

Deputy Magistrate.

32 CAL. 783-563C:—See.

District Magistrate.

32 CAL. 190-566B:—See.

Disaffection.

22 BOM. 112-361B:—Writings showing intention or animus.

22 BOM. 152-362 A:—Disaffection, meaning of—Seditious publication.

Discharge of Accused.

20 MAD. 388-358 B:—Duty of Magistrate to examine witnesses before dismissal of complaint.

2 O. C. 363-506A:—Notice to the accused person must be given and a sufficient reason recorded before setting aside an order of discharge and ordering a further enquiry.

Disobedience.

31 CAL. 930-557B:—Order by a public servant.

Disqualification.

22 ALL. 340-460 E:—District Magistrate not disqualified to try a Reserve Inspector for breach of orders.

DISQUALIFICATION—[Contd.]

20 BOM. 502-359 B:—A share-holder Magistrate disqualified to try a servant of a Company in a respect of goods belonging to the Company.

19 MAD. 263-353 E:—The personal inspection of the *locus in quo* made the Magistrate disqualified.

24 CAL. 167-376 F:—Holding a preliminary enquiry creates no disqualification.

24 CAL. 499-379 C:—Omission to record statement of accused does not make the Magistrate a witness and disqualify him.

19 ALL. 302-367 C:—A Magistrate by going to view a place to understand the evidence does not make himself a witness and is not disqualified to try the case.

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Division of crops.

32 CAL. 154-559 B:—See.

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Escape from Custody.

19 MAD. 310-354 A:—Right to arrest a person without warrant in search for contraband salt.

26 CAL. 748-418 B:—Omission to notify substance of warrant.

23 ALL. 266-462 E:—Escape from lawful custody—Actual thief arrested by private person whilst in possession of stolen property.

27 CAL. 320-423 B:—Resistance to arrest by Police—Escape from Custody.

28 CAL. 253-437 C:—See.

European British Subject.

24 ALL. 511-466 B:—The accused could claim his right to be tried by a jury after once stating that he did not wish it.

Evidence.

23 CAL. 621-375 A:—Evidence of general repute—Rumours,

EVIDENCE—[Contd.]

6 O. C. 73 515 A:—Evidence not recorded in the language of the Court is a mere irregularity not vitiating the trial.

27 CAL. 139-421 A:—Evidence of bad character.

31 CAL. 142-502 C:—In a trial by jury, Counsel for the prisoner can not refer to the depositions given before the committing Magistrate to contradict the witnesses before the Sessions Court without drawing their attention to the contradictions in their previous depositions and giving them an opportunity to explain the same.

25 CAL. 736-388 A:—Admission of inadmissible evidence in a trial by jury.

30 C. 342-507 D:—In a case of enticing away a married woman, the admission of the woman and her husband about the marriage is good evidence to prove the marriage.

27 CAL. 295-422 E:—Dispute regarding right to collect rents—Jurisdiction of Magistrate.

23 BOM. 316-467 B:—Retracted confession—Admissibility of such confession without corroborative evidence.

25 BOM. 45-471 E:—Evidence—Dying declaration.

25 BOM. 168-473 A:—Evidence—Confession—Retracted confession.

25 BOM. 422-473 C:—Withdrawal of prosecution—Discharge—Acquittal—Evidence—Discharged persons called as witnesses.

25 BOM. 543-473 D:—Confession of an accused while in custody of the police.

25 BOM. 675-474 C:—Evidence given and pardon withdrawn by Magistrate.

28 CAL. 339-438 D:—Evidence of accomplice should be ordinarily corroborated.

26 BOM. 50-475 D:—Sessions Judge—Magistrate—Trial—Evidence record-

EVIDENCE—[Contd.]

ed partly by another Judge—Consent of the prisoner.

26 CAL. 49-415 B:—Asking Jury to consider a document purporting to be proved by statement of accused when the prosecution evidence failed to prove it.

30 CAL. 218-531 B:—An order unsupported by evidence should be set aside.

28 CAL. 348-439 B:—Admissibility of written statement recorded by Police officer during investigation.

23 BOM. 213-466 D:—Witness—Accused person calling as witnesses persons charged with him and awaiting a separate trial for the same offence.

22 MAD. 1-400 B:—A letter from husband to wife taken on search on admissible.

23 CAL. 610-374 E:—A Civil judgment is not admissible in evidence in a Criminal prosecution.

22 BOM. 596-391 F:—Statements of witnesses before Police are not admissible.

26 MAD. 191-485 D:—See.

19 ALL. 390-367 F:—Right of the accused to see the Special Police diary.

27 CAL. 295-422 E:—Impropriety of taking down the statements of persons immediately before arrest.

5 O. C. 203-511 A:—The evidence as to the general repute of an accused given by police-officers who did not speak from personal experience and observation but as to what the neighbours generally thought of him was not admissible.

32 CAL. 793-564 A:—See.

32 CAL. 1085-566 A:—See.

Examination of Accused person.

21 BOM. 495-360 A:—Evidence—Confession—Statement of prisoner made before inquiry.

27 CAL. 295-422 E:—Evidence—Im-

EXAMINATION OF ACCUSED PERSON—[Contd.].

propriety of taking down statement of persons immediately before their arrest.

26 CAL. 49-415 B:—The statement of accused cannot fill up a gap in the prosecution evidence.

23 BOM. 213-466 D:—Witness—Accused person calling as witnesses persons charged with him and awaiting a separate trial for offence.

23 MAD. 636-406 C:—Examination of accused before committal—Discretion of Magistrate.

Extortion.

27 CAL. 925-432 C:—Lender of money to be extorted is not an abettor.

31 CAL. 710-555 B:—See.

False charge.

20 MAD. 79-356 H:—On a false charge of dacoity made to the police station house officer, the conviction was held right.

22 BOM. 596-391 F:—False complaint to the Police.

31 BOM. 204-553 A:—See.

32 CAL. 180-585 C:—See.

33 CAL. 1-567 A:—See.

33 CAL. 30-567 C:—See.

False Evidence.

23 MAD. 223-405 A:—Intentionally giving false evidence at a judicial proceeding.

27 CAL. 455-425 C:—Examination on oath by Magistrate to get information for taking proceedings.

27 CAL. 820-430 C:—The Collector under the Land Acquisition Act is not a Court and can not administer oath.

23 MAD. 544-405 D:—Refusal to answer questions of police officer not punishable.

22 ALL. 115-459 C:—Contradictory

FALSE EVIDENCE—[Conld].

statements made before two Magistrates is punishable.

19 MAD. 375-354 E:—Giving a false evidence is punishable though the trial is invalid.

19 ALL. 305-367 D:—A public servant framing an incorrect record to save himself from punishment.

20 ALL. 307-371 I:—See above.

21 ALL. 159-457 C:—False entry made in the special diary of the police.

27 CAL. 144-421 B:—A Police officer who framed a first information and special diary incorrectly was found guilty.

27 CAL. 455-425 C:—A conviction on two contrary statements without proof that any one is false, is unsustainable.

25 ALL. 75-466 C:—Fabricating false evidence—Attempt to commit forgery.

28 BOM. 479-545 C:—See

26 ALL. 509-520 F:—See.

29 ALL. 351-593 D:—See.

32 CAL. 756-562 D:—See.

False Information.

31 BOM. 204-553 A:—See.

32 CAL. 180-585 D:—See.

28 ALL. 705-531 F:—See.

9 O. C. 357-581 C:—See.

False Representation.

32 CAL. 941-565 A:—See.

Fine.

23 CAL. 421-372 D:—Order imposing fine by a Sub-Divisional Officer—Judicial Order—Revision by the High Court.

27 CAL. 992-434 B:—Illegal seizure of cattle—Compensation.

27 CAL. 565-426 C:—Fine—Daily payment of fine, order of—Illegality of such order.

FINE—[Conld]

19 ALL. 112-366 B:—Fine—Portion of fine paid as compensation to complainant.

Forgery.

22 BOM. 317-391 B:—Pleader Suspicious document use in a case—"Guilty knowledge."

25 CAL. 207-381 D:—Forgery—Abetment of forgery by writing out the deed.

21 ALL. 113-456 F:—Forgery—Meaning of the term "Fraud" discussed.

22 BOM. 768-394 E:—Using as genuine a forged document.

25 CAL. 512-385 E:—Forgery—Using a forged document.

25 MAD. 726-480 C:—Application to University for duplicate certificate by person not entitled.

26 CAL. 863-419 A:—A copy of document given to a pleader and then interpolated.

5 O. C. 232-511 B:—A person using a forged certificate for purposes of obtaining employment was convicted.

23 ALL. 84-461 F:—Forgery—Using as genuine a forged document—Person convicted of and sentenced for the forgery not also to be sentenced for its use.

25 ALL. 75-466 C:—Fabricating false evidence.

Further Inquiry.

24 CAL. 395-378 D:—Obstruction to a public thoroughfare—Further inquiry.

33 CAL. 8-567 B:—See.

26 CAL. 425-384 C:—Order of removal of Burning Ghat—Jurisdiction of District Magistrate to order further inquiry.

Forfeiture of Pardon.

30 BOM. 611-552 B:—See.

Grievous Hurt.

29 ALL. 282 (9) C:—See.

Gambling.

- 19 MAD. 209-353 A:—See.
 19 ALL. 11-367 E:—Evidence of a house being a common gaming house—Instruments of gaming.
 29 BOM. 264-548 A:—See.
 27 ALL 567-525 D:—See.
 30 BOM. 348-551 A:—See.
 25 CAL. 432-384 D:—Gambling—Common gaming house.
 26 BOM. 533-476 D:—Police officer investigating offence not to conduct prosecution—Procedure—Gambling.
 26 BOM. 641-478 A:—Gambling—Prevention of Gambling.
 5 O. C. 37-509 C:—The presumption as to what is a common gaming house.
 26 ALL. 270-519 D:—See.
 31 CAL. 910-556 C:—See.
 31 CAL. 542-554 A:—See.
 31 CAL. 910-556 C:—See.

Habitual offenders.

- 5 O. C. 203-511 A:—What is and is not evidence of general repute against a habitual offender.
 5 O. C. 243-512 B:—The Magistrate is to deal with habitual offenders in separate inquiry unless they have been associated together as habitual offenders.

Hauts.

- 31 CAL. 990-557 B:—Order by a public servant.

High Court.

Jurisdiction of (Calcutta.)

- 26 CAL. 746-418 A:—The High Court can revise the proceedings of a Presidency Magistrate and order a further inquiry.
 26 CAL. 874-419 C:—Notwithstanding the withdrawal of the operation of the Criminal Procedure Code, from a certain district, the High Court may continue its appellate and revisional powers over it.

HIGH COURT—[Contd.]

- 27 CAL. 654-427 C:—The High Court cannot hear appeals in respect of sentences passed upon convictions within the Chitragong Hill tracts.
 29 CAL. 382-446 B:—See.
 24 BOM. 471-471 C:—Jurisdiction—High Court's Criminal Revisional jurisdiction over the Consular Court.
 24 BOM. 527-471 D:—Notice—High Court's Criminal revisional jurisdiction.
 28 CAL. 446-441 A:—The High Court can set aside a proceeding on non-joinder of parties.

Jurisdiction of (Madras.)

- 26 MAD. 188-485 A:—The High Court has jurisdiction to transfer a criminal case about possession of immovable property.

- 26 MAD. 139-484 D:—See.

- 26 MAD. 98-483 A:—See.

Jurisdiction of Bombay.

- 24 BOM. 471-471 C:—The Court has no criminal revisional jurisdiction over the proceedings of the consul in the dominion of the Sultan of Muscat.
 24 BOM. 471-471 C:—The High Court's Criminal revisional jurisdiction over the Consular Court.

(Power of Revision.)

- 26 CAL. 746-418 A:—Revision—High Court's power of revision.

- 23 ALL. 249-462 D:—Revision—Power of High Court to revise an order—Circumstances under which such power should or should not be exercised.

- 23 BOM. 50-397 E:—Revision—Sessions Judge's power to revise order in proceedings taken to revoke sanction.

Power of (Revision.)

- 23 MAD. 205-403 D:—Jurisdiction of Sessions Court to interfere.

- 23 MAD. 225-405 B:—Fresh enquiry after improper discharge of accused person—Jurisdiction of Sessions Judge after acquittal.

HIGH COURT—[Contd].

28 CAL. 421-372D:—Order imposing fine by Sub-Divisional Officer—Judicial order—Revision by the High Court.

25 CAL. 233-382 B:—The High Court will not interfere in a case pending in a Subordinate Court unless it is of an exceptional nature.

26 CAL. 766-418C:—The High Court should not interfere in a pending case unless there is some manifest and patent injustice apparent on the face of the proceedings calling for a prompt redress.

20 BOM. 543-359D:—The High Court can interfere with a Magistrate's interlocutory order.

28 CAL. 416-440B:—See.

19 MAD. 238-353 B:—Refusing to revise proceedings in conviction under the Cattle Trespass Act

28 CAL. 423-440C:—The High Court can set aside a sentence of detention in a Reformatory School in lieu of imprisonment.

26 CAL. 188-415E:—Power of revision by High Court Order concerning a ferry.

27 CAL. 820-430 C:—Discretion of High Court to decide matters for which a rule was prayed for but not granted.

21 MAD. 124-389F:—A High Court in revision can revoke an order of a Subordinate Court.

26 CAL. 869-419B:—Use of discretion in nomination of Jurors by Magistrate.

24 BOM. 527-471 D:—Notice—High Court—High Court's Criminal revisional jurisdiction.

26 CAL. 746-418 A:—Revision—High Court's power of revision.

27 CAL. 131-420 A:—Breach of contract by workmen—Trial—Procedure.

38 CAL. 709-443B:—See.

(*Superintendence.*)

26 CAL. 188-415 E:—Power of revision by High Court—Order concerning a ferry.

27 CAL. 892-431 A:—Power of High Court to interfere with Magistrate's Order.

HIGH COURT—[Contd].

26 CAL. 852-418D:—Power of High Court to revise an order as to sanction for prosecution.

27 CAL. 126-419D:—Revision, High Court's power of.

Power of transfer of Criminal Cases.

22 MAD. 148-401A:—See.

22 BOM. 549-392A:—Notice to accused—Bail—Order admitting to bail not revisable by the District Magistrate.

23 CAL. 1442-373A:—Power—District Magistrate to transfer cases to a Subordinate Magistrate.

19 ALL. 249 367 A:—Transfer of criminal case by the High Court to the court of a District Magistrate.

23 CAL. 495-373C:—Transfer of Criminal Case—Reasonable apprehension in the mind of the accused.

Power to transfer of Criminal Cases.

19 ALL. 64 365 C:—Transfer of Criminal Case—Grounds upon which transfer may be granted.

25 CAL. 727-387 E:—Transfer of Criminal Case—Expression of belief by the District Magistrate.

19 ALL. 302-367 C:—The view of the scene of the occurrence by a Magistrate trying a Criminal Case is no ground for transfer.

(*Power of interfering with verdict of Jury.*)

20 MAD. 445-358 E:—Criminal trial in Sessions Court—Examination of some of the witnesses bound over—Stopping the trial.

25 CAL. 711-387 D:—Charge to the Jury—Setting aside the verdict of Jury.

31 CAL. 685-555A:—Jurisdiction.

34 CAL. 30-573B:—See.

House Breaking.

23 BOM. 706-469 C:—Conviction of several offenders at one trial—One sentence only to be passed in such cases.

House—Trespass.

19 ALL. 74-365 E:—House—Trespass with intent to commit adultery.

23 ALL. 82-461 E:—House trespass by night with intent—Alleged intent theft—Proved intent to commit adultery with complainant's wife.

Hurt (*Causing grievous hurt*).

27 CAL. 566-427 A:—Where accused have been acquitted of rioting, they can not properly be convicted of grievous hurt.

Illegal gratification.

21 BOM. 517-360 B:—Public Servant—Agreement to restore village mahars to office.

32 CAL. 292-560 D:—See.

Imprisonment.

19 MAD. 238-353 B:—Cattle—trespass—No appeal.

19 ALL. 73-365 D:—Compensation for frivolous and vexatious complaint—Order in the alternative for imprisonment.

20 MAD. 3-356 C:—Maintenance—Sentence of imprisonment in default.

25 CAL. 291-383 A:—Maintenance—Imprisonment for default of payment of maintenance.

20 MAD. 385-357 H:—Excess charge and fare recoverable as a fine—Magistrate not competent to impose imprisonment in default.

20 ALL. 95-369 E:—Travelling on a Railway without a proper ticket—Punishment.

Indictment.

32 CAL. 22-558 B:—Charge.

Insanity.

23 CAL. 604-374 D:—A person subject to insane impulses but whose cognitive faculties appear to be unim-

INSANITY [Conld.]

paired is not exempt from criminal liability.

28 CAL. 613-442 C:—Whether a person who under an insane delusion as to existing facts commits an offence in consequence thereof, and is to be therefore excused, depends on the nature of the delusion.

Intention.*(I Criminal Trespass.)*

21 BOM. 586-360 C:—Criminal trespass—Mischief—Who may complain.

19 MAD. 240-353 C:—Criminal trespass—Intent.

19 ALL. 74-365 E:—House trespass with intent to commit adultery.

(II Murder.)

20 ALL. 143-370 E:—Attempt to murder—Intention.

19 MAD. 483-356 A:—Murder—Sentence of penal servitude.

(III Theft.)

27 CAL. 660-428 C:—Theft, Charge of—Conviction—Appeal.

27 CAL. 990-434 A:—Conviction of rioting with the common object of theft.

27 CAL. 501-426 B:—Dishonest intention is essential.

25 CAL. 416-383 D:—Removing a thing with the object of causing trouble to the owner is not theft.

23 MAD. 155-402 D:—Abetment of an offence.

Jailor.

20 BOM. 795-359 G:—Police Custody—Jailor in a Native State.

Joinder.

25 BOM. 90-472 B:—Joinder of charges—Offences falling under two definitions—Trial for more than one offence.

30 BOM. 49-550 A:—See.

Joint Trial.

31 CAL. 1053-558 A:—See

31 CAL. 1007-557 C:—See.

8 O. C. 91-578 B:—See.

30 BOM. 49-550 A:—See.

Judge.

28 BOM. 412-545 B:—Jury.

32 CAL. 759-562 E:—See.

Judgment.

19 ALL. 506-368 C:—What the judgment must contain.

33 CAL. 502-373 E:—Pronouncing the sentence before writting the judgment is an irregularity.

21 ALL. 177-457 E:—Power of Judge to alter the judgment.

31 CAL. 483-557 A:—Presidency Magistrate.

Judicial proceeding.

27 CAL. 452-425 B:—Report by a police of falsity of information, sanction by District Magistrate on police report—Judicial proceeding—Subordination of Police officer to District Magistrate.

25 MAD. 659-479 D:—See.

Jurisdiction of Criminal Court.*1 (General Jurisdiction.)*

25 CAL. 858-399 E:—Where the scene of offence is situate in one district or another, the offence is triable in the court of either district.

22 BOM. 54-361 A:—The Consular Court has no jurisdiction over persons not residing within a British Protectorate.

25 CAL. 20-381 C:—Criminal jurisdiction along the Railway through Indian Independent States.

25 BOM. 667-474 B:—Jurisdiction—Reference and appeal in a criminal case from the Scheduled Districts Act. XI of 1846.

JURISDICTION OF CRIMINAL COURT—[Conld].2 *Offences committed partly in one district.*

18 ALL. 350-363 E:—Offences committed in different districts in the course of the same transaction.

19 ALL. 109-366 A:—Offences committed outside British territory.

31 CAL. 685-555 A:—See.

28 ALL. 372-529 E:—See.

28 ALL. 89-526 D:—See.

28 ALL. 406-530 C:—See.

28 ALL. 266-528 C:—See.

28 ALL. 554-593 A:—See.

34 CAL. 42-574 A:—See.

30 MAD. 136-544 A:—See.

29 ALL. 7-532 A:—See.

29 ALL. 137-522 E:—See.

32 CAL. 783-563 C:—See.

32 CAL. 425-561 A:—See.

32 CAL. 367-560 F:—See.

32 CAL. 1069-565 E:—See.

32 CAL. 948-565 B:—See.

32 CAL. 796-564 B:—See.

32 CAL. 552-561 F:—See.

32 CAL. 287-560 C:—See.

32 CAL. 154-559 B:—See.

32 CAL. 771-563 A:—See.

32 CAL. 935-564 D:—See.

29 BOM. 575-549 B:—See.

32 CAL. 287-560 C:—See.

Jury.

28 BOM. 412-545 B:—See.

26 ALL. 211-519 C:—See.

31 CAL. 979-556 E:—Public nuisance.

34 CAL. 325-574 C:—See.

30 MAD. 44-543 C:—See.

34 CAL. 325-574 C:—See.

30 MAD. 44-543 C:—See.

32 CAL. 759-562 E:—See.

Kidnapping.

18 ALL. 350-363E:—Offences committed in different districts in the course of the same transaction.

1 O. C. 4-505A:—For kidnapping two girls, the prisoner should have been separately sentenced.

19 ALL. 109-366A:—The offence of kidnapping from lawful guardianship is not a continuing offence.

27 MAD. 61-493 A:—See.

27 CAL. 104-434D:—The offence of kidnapping is complete when the minor is actually taken from lawful guardianship.

26 ALL. 197-519A:—See.

32 CAL. 444-561C:—See.

Letters Patent—High Court.

18 ALL. 174-362D:—See.

22 ALL. 49-458D:—See.

Magistrate.

21 MAD. 246-390A:—The conviction was not invalidated by the absence of two of the Magistrates at the end of the trial before whom it had begun.

32 CAL. 935-564D:—See.

27 CAL. 259-422C:—Jurisdiction of Magistrate—Appointment of a receiver of a jointestate—Joint owners governed by Mitakshara law.

26 MAD. 130-484B:—See.

26 CAL. 188-415 E:—Order concerning a ferry—Superintendence of High Court.

24 BOM. 527-471D:—A Magistrate professing to act under Criminal Procedure Code is bound to follow the proper procedure.

24 CAL. 391-378 C:—Authority of District Magistrate—Sub-Divisional Magistrate.

27 CAL. 981-433 B:—Possession—Irregularity proceedings without jurisdiction.

MAGISTRATE—[Contd.]

25 CAL. 423-384 B:—Liability for neglecting to keep a factory in a cleanly state.

24 CAL. 55-376 D:—Possession—Adding parties during the course of proceedings.

26 CAL. 625-417 C:—Jurisdiction of Magistrate—Power of Revision by the High Court.

27 CAL. 785-430 A:—Prohibition to both parties from exercising right of possession.

23 CAL. 557-374B:—Dispute concerning julkar right—Breach of the peace—Imminent danger—Grounds for Magistrate to take proceedings.

25 CAL. 434-384 E:—Restoration of possession of immoveable property—Dispossession by use of criminal force.

23 BOM. 494-468D:—Order to restore possession of immoveable property.

27 CAL. 124-422 A:—Restoration of possession of property—Use of criminal force.

24 CAL. 757-380E:—Power of Magistrate—Delay—Notice to parties.

20 MAD. 235-357 D:—Execution outside jurisdiction.

20 MAD. 457-358F:—Breach of contract—Warrant.

20 ALL. 124-370 C:—Fraudulent breaches of contract by workmen—Warrant can be executed outside the jurisdiction.

25 CAL. 798-386B:—Rule issued upon the Magistrate—Right to appear of a party interested in the result.

27 CAL. 295-422 E:—Trial by jury—Deposition before committing Magistrate.

26 CAL. 49-415B:—Evidence in criminal case—Statement of accused—Misdirection.

21 BOM. 495-360A:—Statement of prisoner made in the course of, or after enquiry.

MAGISTRATE—[Contd.]

23 MAD. 636-406 C:—Examination of accused before committal—Discretion of Magistrate.

25 BOM. 543-473 D:—Confession of an accused while in custody of the police—Duty of Magistrate—Trial—Evidence recorded partly by another Judge—Consent of the prisoner—Jurisdiction.

26 BOM. 418-476 C:—Security for good behaviour—Witness—Magistrate—Summons—Refusal to summon—Procedure.

(1 General Jurisdiction.)

22 ALL. 350-460 E:—A Magistrate is disqualified for being a share-holder of a firm of which a servant is tried for breach of trust.

19 MAD. 263-353 E:—A Magistrate making a personal inspection was held to be a witness.

29 CAL. 455-449 A:—When the surety bond is accepted by a Subordinate Magistrate, the District Magistrate can not cancel it.

24 CAL. 167-376 F:—A Magistrate is not qualified by holding a preliminary enquiry.

29 CAL. 412-448 B:—A Magistrate cannot convict for an offence exclusively triable by Court of Sessions.

24 CAL. 499-379 C:—A Magistrate is not disqualified by omission to record the statement of the accused.

29 CAL. 242-445 B:—See.

19 ALL. 302-367 C:—A Magistrate holding a local enquiry is not disqualified.

30 CAL. 112-453 D:—See.

30 CAL. 110-453 C:—See.

29 CAL. 885-452 B:—Proceedings instituted by Magistrate of another district.

(II Transfer.)

19 ALL. 114-366 C:—An order passed by a Magistrate after his successor had entered upon his duty is invalid.

MAGISTRATE—[Contd.]

(III Power of.)

27 CAL. 798-430 B:—A Magistrate is not justified to pass an order in a case before a Subordinate court without transfer to his own court.

27 CAL. 979-433 A:—Magistrate, jurisdiction of—Reference of case for trial of offence by Subordinate Court.

22 BOM. 549-392 A:—The District Magistrate can not revise the order of bail passed by a Subordinate Magistrate.

26 CAL. 786-418 C:—Taking cognizance of a complaint by a Magistrate upon receiving a complaint.

21 ALL. 109-456 D:—Jurisdiction of Magistrate to hold a preliminary enquiry not ousted.

22 MAD. 148-401 A:—See.

25 BOM. 179-473 B:—Magistrate's powers—Breach of peace—Rights of the parties

(IV Commitment to Sessions.)

20 ALL. 264-371 H:—A Magistrate can not commit before taking all the evidence of the accused.

21 ALL. 265-453 B:—A Magistrate can discharge the accused if he finds the evidence for the prosecution untrustworthy.

24 CAL. 429-378 E:—The commitment by a Deputy Magistrate was not necessarily illegal.

(V Withdrawal of case.)

22 BOM. 549-392 A:—A case can not be transferred without notice to the accused.

Maintenance.

(Order of Criminal Court as to.)

24 CAL. 638-380 A:—The Court having cognizance is that within whose jurisdiction the husband resides.

35 O. C. 316-513 B:—Wilful neglect to pay maintenance can be punished with imprisonment.

MAINTENANCE—[Conld.]

26 ALL. 326-519 E:—See.

19 MAD. 461-355 A:—If the children are illegitimate, the refusal of the mother to surrender them to the father is no ground for refusing maintenance.

22 MAD. 246-401 E:—A child of Sumbandhan marriage is to be maintained by the father.

25 ALL. 165-495 B:—An agreement of the parties subsequent to the order for maintenance is of itself no bar to the enforcement of the order; but the party chargeable should inform the Court of the settlement and obtain an alteration of the order.

20 MAD. 470-358 G:—Adultery may justify the wife separating her from husband and claim maintenance.

19 ALL. 50-365 B:—An order for the maintenance of a wife can not be enforced after divorce.

23 BOM. 484-468 A:—A decree of a Civil Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance of the wife.

20 MAD. 3-356 C:—The maximum imprisonment for default in payment of maintenance is one month for each month's arrear.

25 ALL. 545-497 C:—An application for the cancelment of an order for maintenance must be made to the Magistrate who passed the original order or his successor.

25 CAL. 291-383 A:—An order for imprisonment for default in payment of maintenance can not be made without proof that the non-payment was due to wilful neglect of the husband.

5 O. C. 316-512 B:—Wilful neglect to pay maintenance to wife—Evidence of.

27 ALL. 483-524 F:—See.

27 ALL. 11-592 A:—See.

9 O. C. 49-581 A:—See.

Malicious prosecution.

21 ALL. 26-399 B:—Conviction of plaintiff and acquittal in appeal shows reasonable and probable cause.

9 O. C. 357-581 C:—See.

Marriage.

20 ALL. 166-371 D:—Enticing away a married woman—Evidence of marriage.

Mischief.

21 BOM. 536-360 C:—See.

24 ALL. 155-464 B:—Mischief—Wilful pollution of food served at a caste-dinner.

22 BOM. 859-395 E:—A compounding offence.

Misdirection.

27 CAL. 172-421 C:—Power of Appellate Court to order a retrial.

25 CAL. 561-386 D:—Effect of omission to explain the law to the Jury.

21 MAD. 83-389 D:—Confession of accused subsequently retracted.

23 BOM. 316-467 B:—Misdirection as to admissibility of retracted confession without corroborative evidence.

26 CAL. 49-415 B:—Consideration of document purporting to be proved by accused.

22 BOM. 528-391 E:—Statements of witnesses before police not admissible against accused—Evidence.

26 MAD. 38-481 B:—See.

26 MAD. 1-481 A:—See.

Murder.

20 ALL. 143-370 E:—Attempt to murder—Intention.

29 CAL. 492-451 A:—Disease brought on by voluntary drunk-en-ness—Effect of.

19 MAD. 483-356 A:—Absence of proof of common intention of death.

MURDER—Conld.

28 CAL. 571-442 A:—Provocation grave and sudden.

5. O. C. 321-513 C:—Murder of husband by wife after conspiracy.

See Penal Code Section 304.

Negligence.

20 ALL. 534-398 F:—A Pragwal is liable to take out license to accommodate pilgrims.

Nuisance.

(I Under Crl. P. Code.)

20 ALL. 501-398 D:—The Magistrate can not order the repair of a house not adjoining the public road.

23 ALL. 159-462 C:—Encroachment upon unmetalled portion of a Government road.

25 CAL. 425-384 C:—The Magistrate can order the removal of Burning Ghat.

24 CAL. 395-378 D:—Obstruction to public thoroughfare.

22 BOM. 714-392 E:—A Magistrate can not order an excavation adjacent to a public way to be filled up but can order it to be fenced.

22 BOM. 988-397 C:—Obstruction in a public river.

25 CAL. 852-399 D:—Order regulating boat traffic at a landing place.

27 CAL. 918-432 D:—A Magistrate can not determine rights and shares of parties but can only maintain actual possession.

23 CAL. 499-373 D:—The Magistrate should satisfy himself as to the *bonafides* of the claim about land.

25 CAL. 278-382 E:—When the claim is *bonafide* the Magistrate should allow the party to go to Civil Court for determination of rights.

26 CAL. 869-419 B:—When the claim is *bonafide*, no reference should be made to the jury.

NEGLIGENCE—[Conld].

25 CAL. 278-382 E:—Reference by a Sub-Divisional Magistrate to a second class Magistrate.

(II Under Penal Code.)

22 ALL. 113-459 B:—Soliciting for purposes of prostitution is no nuisance.

20 MAD. 433-358 C:—Obstruction to public high way is punishable.

19 MAD. 464-355 B:—Disobedience to an order duly promulgated by a public servant is no offence when the order is illegal.

34 CAL. 73-574 B:—See.

Noxious food.

26 ALL. 387-520 E:—See.

Obscene advertisement.

32 CAL. 247-560 A:—See.

Obstruction.

24 CAL. 395 378 D:—Obstruction to a public thoroughfare.

22 BOM. 714-392 E:—Excavations near a public place.

22 BOM. 988-397 C:—Obstruction in a public river.

Offence.

27 CAL. 985 433 D:—Non-attendance on service of summons.

20 MAD. 31-356 G:—Non-attendance in obedience to an order of a public servant.

21 MAD. 124-389 F:—See.

26 CAL. 869-419 B:—Obstruction in a public way.

23 MAD. 225-405 B:—Fresh enquiry after improper discharge of accused person.

20 MAD. 383-357 U:—"Judicial proceedings."

4 O. C. 96-507 E:—The order committing accused for false evidence given in a judicial proceeding must be made after a preliminary enquiry.

OFFENCE—[Could]

27 CAL. 452-425 B:—Information by accused of offence.

26 CAL. 560-416 D:—Criminal breach of trust by public servant.

24 ALL. 256-464 D:—Offence committed out side British India by a Native Indian subject.

25 BOM. 90-472 B:—Trial for more than one offence.

25 BOM. 680-474 D —Offence triable with the aid of assessors tried in fact by a Jury.

Pardanashin women.

24 CAL 551-379 E:—Commission to examine witness—*Pardanashin* lady.

Pardon.

23 BOM. 493-468 C:—Trial of approver for non-fulfilment of the condition on which pardon was offered, should be commenced after the case in the Sessions Court has been finished.

23 BOM. 213-466 D:—See.

6 O.C. 236-516C:—The trial of an accused is illegal after the tender of pardon and its withdrawal.

23 BOM. 493-468C:—Pardon tendered to one of the accused.

27 CAL. 137-420 C:—Tender of pardon— Trial of person who having accepted a pardon has not fulfilled the conditions on which it was offered.

20 ALL. 529-398 E:—Pardon by Magistrate enquiring into criminal case.

20 ALL. 40-369 B:—Pardon—Tender of pardon by a Magistrate having power but not being the Magistrate before whom the enquiry was being held.

24 CAL. 492-379 A:—Withdrawal of conditional pardon.

3 O. C. 245-506 E:—The Sessions Judge should have tried whether the accused who had been pardoned intentionally gave false evidence before convicting him.

PARDON—[Could].

3 O. C. 191-506 D:—The Court can revoke a pardon where it does not believe the evidence given by the accused.

29 ALL. 24-532B:—See.

30 BOM. 411-552 B:—See.

Penal Code.

(Act XLV of 1860.)

Section 19.

23 MAD. 540-405 C:—The village Magistrate while preventing an offence is not a Judge.

Section 21.

26 CAL. 630-417 D:—Public servant acting under warrant of attachment not produced at the trial.

21 BOM. 517-360B:—Patel is a Public servant.

23 MAD. 540-405 C:—See.

19 MAD. 464-355 B:—Disobedience to an order duly promulgated by a public servant.

25 CAL. 274-482 C:—Resistance to to attachment—Absence of lawful authority.

28 CAL. 344-439 A:—A manager employed under the Court of Wards is not a public servant but a peon of the Salt Department is one.

21 MAD. 78-389C:—Resistance to the taking of property by a Public servant.

26 ALL. 542-521D:—See.

26 CAL. 158-415 C:—A Surveyor employed by the Collector in a Khas Mahal is a public servant.

21 ALL. 127-457 B:—A manager employed under the Court of Wards is a public servant.

21 MAD. 428-390E:—A Sanitary Inspector appointed by the Local Board is a public servant.

30 CAL. 1084-502C:—Arbitrator Public servant.

PENAL CODE—[Contd].

Sections 22 24.

27 CAL. 501 426B:—See.

Sections 24, 25.

25 CAL. 512-385 E:—See.

Section 34.

3 O. C. 263 507B:—See.

29 CAL. 496-451B:—See.

21 ALL. 263 458 A:—See.

Sections 37, 38.

25 BOM. 636-474A:—No-operation.

Section 40.

6 MAD. 607-490 C:—Extradition Act, offences relating to.

29 CAL. 496-451 B:—See.

Section 44.

30 CAL. 418-455 B:—See.

Sections 64, 65, & 67.

22 MAD. 238-401D:—See.

Sections 62, 406.

29 ALL. 25-532 C:—See.

Section 70.

23 ALL. 497-463 C:—See.

Section 71.

23 BOM. 706-469 C:—Conviction for several offences at one trial, one sentence only to be passed in such cases.

Section 79.

24 CAL. 885-381 B:—See.

30 CAL. 95-452D:—See.

Section 84.

23 CAL. 604-374 D:—Unsoundness of mind—Criminal liability, legal test of.

28 CAL. 613-442C:—See.

34 CAL. 686-587A:—See.

Sections 84, 85.

29 CAL. 493-451A:—See.

Section 95.

29 CAL. 489-450B:—See.

Section 96.

24 ALL. 298-165E:—See.

PENAL CODE—[Contd].

21 ALL. 122-457 A:—See.

24 ALL. 143-463 D:—See.

Sections 97, & 99.

24 CAL. 686-380B:—Roiting—Unlawful assembly—Right of private defence of property.

26 CAL. 574-417A:—Roiting Unlawful assembly—Right of private defence of property.

19 MAD. 349-354B:—See.

20 ALL. 459-398 C:—See.

26 ALL. 542-521 D:—See.

Sections 79, 47, 147.

33 CAL. 295-370B:—Roiting.

Section 99.

29 CAL. 417-448 D:—See.

30 CAL. 97-452 E:—See.

28 ALL. 481-531B:—See.

Section 102.

10 O. C. 196-583D:—See.

Section 104.

26 MAD. 249 486A:—Private defence —“Protect a right”—Unlawful assembly.

Sections 107, 108 & 109.

27 CAL. 564-427 A:—Presence of persons at commission of offence.

26 MAD. 249-486 A:—Private defence —“Protect a right”—Unlawful assembly.

20 MAD. 8-356 D:—Abetment of an offence—Sanction to prosecute unnecessary.

24 BOM. 287 470 D:—See.

26 ALL. 197 519 A:—See.

31 CAL. 1053 558 A:—See.

Section 109.

31 CAL. 350 502 D:—See.

28 CAL. 797 445 C:—See.

30 CAL. 822 500 C:—See.

30 CAL. 905 500 D:—See.

Section 114.

27 CAL 566 427 A:—Presence of

PENAL CODE—[Contd].

Abettor.

29 CAL. 496 451 B:—See.

30 CAL. 95 452 D:—See.

Section 117.

28 CAL. 797 443 C:—See.

Section 124 A.

22 BOM. 112 361 B:—Disaffection.

22 BOM. 152 362 A:—Seditious publication—Disaffection.

90 ALL. 55 369 C:—Disaffection explained—Exciting disaffection.

Section 141.

24 CAL. 324-377 E:—See.

29 CAL. 214-444 D:—See.

29 CAL. 244-445 C:—See.

Section 143.

29 CAL. 417-448 D:—See.

29 CAL. 481-449 D:—See.

30 CAL. 285-453 F:—See.

Section 147.

24 ALL. 143-463 D:—See.

24 ALL. 298-464 E:—Right of private defence.

29 CAL. 244-455 C:—See.

Sections 143, 144, 147, 148 & 149.

26 CAL. 574-417 A:—Rioting.

27 CAL. 660-428 C:—See.

27 CAL. 983-433 C:—See.

24 CAL. 686-380 B:—Rioting—Unlawful assembly—Right of private defence of property—Causing grievous hurt in furtherance of common object.

28 CAL. 411-440 A:—See.

Section 143, 149.

25 MAD. 624-479 B:—Unlawful assembly—Defence by accused persons of property in their possession.

37 CAL. 990-434 A:—See.

28 CAL. 253-437 C:—See.

Sections 147, & 149.

29 CAL. 128-444 A:—See.

29 CAL. 379-446 A:—See.

PENAL CODE—[Contd].

Section 149.

31 CAL. 424-503 C:—Criminal force by members of an unlawful assembly to deter a public servant from discharge of duty.

Section 150.

29 CAL. 214-444 D:—See.

Section 153.

26 MAD. 554-489 D:—Disturbing a religious assembly.

Section 154.

28 CAL. 504-441 B:—See.

8 O. C. 418 580A:—See.

Section 157.

29 CAL. 214-444 D:—See.

Section 161.

21 BOM. 517-360 B:—Agreement to restore village mahars to office—Gratification.

26 BOM. 193-476 A:—Evidence—Corroboration—Bribery.

21 ALL. 127-457 B:—See.

Section 170.

27 ALL. 294-523 A:—See.

Section 174.

24 CAL. 320-377 D:—Warrant of arrest—Illegal issue of warrant.

29 CAL. 236-445 A:—See.

Section 175.

29 CAL. 236-445 A:—See.

Section 177.

27 CAL. 985-433 D:—See.

20 ALL. 151-370 F:—Police officer recording a false report.

8 O. C. 128-578 C:—See.

Section 179.

23 MAD. 544-405 D:—Examination of witnesses by police—Legal obligation to speak the truth—Refusal to answer questions—Liability to punishment.

Section 182.

25 ALL. 531-497 A:—See.

PENAL CODE—[Contd].

27 CAL. 452-425 B:—Information by accused of offence.

31 BOM. 204-553 A:—See.

28 MAD. 565-537 D:—See. ✓

32 CAL. 180-585 D:—See.

Section 183.

25 CAL. 274-382 C:—Resistance to attachment.

21 MAD. 78-389 C:—Attachment of goods not being of judgment debtor.

29 CAL. 417-448 D:—See.

23 CAL. 896-375 C:—Obstructing a public servant in the discharge of his public functions.

24 CAL. 320-377 D:—Illegal issue of warrant of arrest—Justifiable assault.

20 CAL. 285-453 F:—See.

2 MAD. 236-390 D:—Resistance to illegal distraint.

29 CAL. 236 445 A:—See.

31 CAL. 664-551 G:—See.

27 ALL. 258-522 B:—Warrant not in possession of the person attaching.

Section 184.

27 ALL. 480-524 E:—Obstruction to sale.

Section 186.

20 MAD. 1-356 B:—Disobedience to notice given by President of Local Board.

27 ALL. 499-525 B:—Collection of canal due.

Section 187.

23 MAD. 514-405 D:—Legal obligation to speak the truth—Refusal to answer questions.

22 BOM. 769-395 A:—See.

26 MAD. 419-492 A:—Rendering assistance to public servant.

Section 188.

19 MAD. 464-355 B:—Disobedience to an order duly promulgated by a public servant—Illegal order.

20 ALL. 301-398 D:—Power of

PENAL CODE—[Contd].

Magistrate to order repair of a house not adjoining a public road.

31 CAL. 1990-557 B:—Public servant.

32 CAL. 790-564 A:—See.

Section 191.

96 ALL. 509-520 F:—See.

Section 192.

31 CAL. 350-502 D:—See.

Sections 192, 193.

21 ALL. 159-457 C:—See.

26 ALL. 514-521 B:—See.

28 MAD. 308-537 A:—See.

29 ALL. 351-593 D:—See.

Section 193.

28 CAL. 348-439 B:—Intentionally giving false evidence.

28 CAL. 434 410 D:—See.

22 ALL 115-459 C:—See.

26 MAD. 55-482 D:—Charge of giving false evidence.

25 ALL. 75-466 C:—Fabricating false evidence—Attempt to commit forgery.

28 BOM. 479-545 C:—Perjury.

28 BOM. 533-545 D:—False evidence.

29 MAD. 89-538 A:—See.

23 ALL 705-531 F:—See.

Sections 191, 199.

23 MAD. 223-405 A:—Intentionally giving false evidence at a judicial proceeding.

29 CAL. 236-445 A:—See.

19 ALL. 200-366 F:—False statement made by a convict in an affidavit in support of an application for revision.

27 CAL. 455-425 C:—Examination on oath of person by Magistrate to obtain information.

27 CAL. 820 430 C:—A Collector under the Land Acquisition Act can not Administer oath.

23 MAD. 514 405 D:—A refusal to answer questions of a Police officer is not punishable.

PENAL CODE—[Contd].

4 O. C. 96 507 E:—Offence committed in course of a judicial proceeding.

27 CAL. 820 430 C:—See.

19 MAD. 375 354 E:—That the trial for dacoity had to be commenced *de novo* did not exonerate the prisoner from the obligation to speak the truth.

27 CAL. 455 425 C:—A conviction on one statement as being contrary to another without any proof that the one is false, is not maintainable.

Section 206.

5 O. C. 46-510 A:—See.

28 CAL. 217-437 A:—Attachment of crops.

Section 210.

23 CAL. 971-375 D:—Execution of a decree which has been satisfied.

33 CAL. 198-569 B:—See.

Section 211.

20 MAD. 79-356 H:—A false charge made to a Police Officer is punishable.

27 CAL. 921-432 B:—False charge, prosecution for making.

28 CAL. 251-437 B:—False case, compensation for.

22 BOM. 596-391 F:—False complaint made to a Police officer is punishable.

5 O. C. 240-512 A:—Sanction to prosecute for making a false charge.

✓ 29 CAL. 479 449 C:—See.

30 CAL. 923 501 D:—Complaint—Dismissal of complaint—Complainant, examination of—False charge—Jurisdiction of Magistrates.

27 MAD. 127 493 C:—Preferring a false charge—statement not reduced to writing by Police officer.

27 MAD. 129 494 A:—Preferring a false charge—Charge made to a village Magistrate—Sustainability.

✓ 31 BOM. 204 553 A:—See.

34 CAL. 42 574 A:—See.

33 CAL. 1 567 A:—See.

PENAL CODE—[Contd].

Sections 213 & 214.

23 CAL. 420 372 C:—The person screened must be proved to be guilty.

27 CAL. 925 432 C:—Accomplice—Wrongful confinement.

Section 215.

20 ALL. 389 372 B:—Nature of the agreement to take illegal gratification.

23 ALL. 81-461 D:—Theft—Receiving gratification to help the owner to recover stolen property—Section 215 not intended to apply to the actual thief.

Section 216.

25 ALL. 261 495 E:—Meaning of the term "harbouring".

Section 219.

30 CAL. 415 455 A:—See.

Section 223.

29 ALL. 377 594 A:—See.

Sections 224, 226.

19 MAD. 310 354 A:—Right to arrest a person without warrant in search for contraband salt.

27 CAL. 366 424 A:—Rescue of a person unlawfully arrested by a private person and made over to a Village chowkidar.

28 CAL. 253 437 C:—Arrest—Escape from lawful custody.

26 CAL. 748 418 B:—An arrest without notifying the substance of warrant is unlawful.

23 ALL. 266 462 E:—Escape from lawful custody.

27 ALL. 491 525 A:—See.

Section 225.

29 CAL. 385 446 C:—See.

29 ALL. 575 594 C:—See.

Section 225 B.

28 CAL. 399 439 E:—Warrant—Accused, wrong description of—Resistance to lawful apprehension.

Section 230.

29 ALL. 141 533 A:—See.

PENAL CODE—[Contd].

Section 235, 243.

28 ALL. 62 526 C:—See.

Section 232.

23 ALL. 420 463 A:—Counterfeiting Queen's coin—Removing rings from coins used as ornaments and restoring the same to circulation.

Sections 240, 243.

31 CAL. 1007 557 C:—Joint trial.

Section 241.

31 CAL. 691 585 A:—See.

Section 266.

22 ALL. 113 459 B:—See.

Section 268.

22 ALL. 113 459 B:—Soliciting for purposes of prostitution is no nuisance.

20 MAD. 433 358 C:—Obstruction to public high way.

34 CAL. 73 574 B:—See.

Section 269.

24 CAL. 494 379 B:—Negligent act—Refusal to allow a person suffering from an infectious disease to be removed to a hospital.

28 ALL. 287 500 E:—See.

Sections 273.

28 ALL. 312 529 A:—Sale of noxious food.

26 ALL. 387-520E:—See.

Sections 286, 337.

38 ALL. 464 531 A:—See.

Section 283.

20 MAD. 433 358 C:—Encroachment on a public high way.

25 CAL. 275 382 D:—Obstructing a public way.

Sections 290 291.

22 ALL. 113 459 B:—Soliciting for purposes of prostitution is no nuisance.

19 MAD. 464 355 B:—Cremation in disobedience to an illegal order was not punished.

Section 292.

28 ALL. 100 527 A:—Distributing

PENAL CODE—[Contd].

obscene pamphlet.

Section 296.

26 MAD. 554 489 D:—Disturbing a religious procession on a high way.

Sections 295, 296, 297.

18 ALL. 395 364 E:—Trespass on burial ground.

Section 298.

24 ALL. 155 464B:—Wilful pollution of food served at a caste-dinner.

Sections 300, 304 A.

18 ALL. 497 365 A:—Grave and sudden provocation.

19 MAD. 356 354 D:—Act done with the knowledge that death would be a probable result.

28 CAL. 571 442 A:—Provocation grave and sudden.

20 ALL. 143 370 E:—Attempt to murder—Intention.

19 MAD. 483 356 A:—Absence of proof of common intention to cause death.

28 CAL. 571-442A:—See.

29 CAL. 483 450A:—See.

29 CAL. 493 451A:—See.

29 CAL. 379 446A:—See.

29 ALL. 282 593C:—See.

32 CAL. 73 558B:—Railway collision.

Section 304, 325.

29 ALL. 282 593 C:—See.

Section 307.

20 ALL. 143-370E:—Attempt to murder—Intention.

28 CAL. 797 443C:—See.

24 BOM. 287 470 D:—Offence not triable except with the certificate of Political Agent or sanction of Government.

Section 311.

5 O. C. 240 512A:—Sanction to prosecute for making false charge—Invalid of proceedings.

PENAL CODE--[Contd].

Section 317.

18 ALL. 364 364 C:—Exposure of
child.”—

Section 323.

29 CAL. 379 446A:—See.

30 CAL. 288.454 A:—See.

Section 325.

29 CAL. 128 444A:—See.

29 CAL. 379 446 A:—See.

29 ALL. 28: 593C:—See.

34 CAL. 693 587B:—See.

Section 325 & 326.

24 CAL. 686 380B:—Causing grievous
hurt in furtherance of common object.

Section 330.

20 BOM. 394 359 A:—Using violence
to extort confession.

Section 332.

18 ALL. 246 363C:—Assault on police
making arrest without sufficient authority
but in good faith.

Sections 339 & 342.

24 CAL. 885 381 B:—Wrongful res-
traint.

Section 342.

5 O. C. 240 512A:—See.

27 CAL. 925 532C:—See.

30 CAL. 95 452D:—See.

30 MAD. 179 544A:—See.

Section 343.

29 CAL. 128 444A:—See.

Section 347.

31 CAL. 710-555B:—Extortion.

Section. 350.

25 ALL. 341 496E:—Use of criminal
force.

Section 351.

30 CAL. 97 452 E:—See.

Section 352.

31 CAL. 664 554C:—See.

Section 353.

26 CAL. 630 417D:—Detering a pub-
lic servant from discharge of duty.

✓ **PENAL CODE—[Contd].**

31 CAL. 424 503 C:—Criminal force
by member of an unlawful assembly to
deter a public servant from discharge of
duty.

28 CAL. 399 439 E:—Resistance to
lawful apprehension.

27 MAD. 52 492B:—Using criminal
force to deter a public servant—Entry by
Police on premises of suspected person
at night—Assault on Police.

28 CAL. 411 440A:—See.

32 CAL. 97.452E:—See.

✓ 29 ALL. 272 593B:—See.

Section 366.

1 O. C. 4 505 A:—Kidnapping two
girls—Separate sentences.

26 ALL. 197 519A:—See.

Sections 361 & 368.

19 ALL. 109 366A:—Kidnapping is
not a continuing offence.

27 CAL. 1041 434 D:—Completion of
Kidnapping—Constructive possession.

18 ALL. 350 363 E:—Offences com-
mitted in different districts in the course
of the same transaction.

Section 372.

24 BOM. 287 470 D:—Disposing of a
girl for immoral purposes.

Section 373.

23 MAD. 159 403A:—Obtaining a girl
for purposes of prostitution.

Section 376.

29 CAL. 415 448C:—See.

Section 379.

21 CAL. 501 426B:—Bonafide belief
as to title—Cutting and carrying away
crops.

27 CAL. 660 428C:—See.

27 CAL. 990 434A:—Conviction of
rioting with the common object of
theft.

29 CAL. 393 447C:—See.

29 CAL. 481 449D:—See.

PENAL CODE—[Contd].

27 MAD. 531-594D:—See.

Sections 378 & 381.

27 CAL. 660-428C:—Charge of theft-conviction of offence of different character—Legality of.

27 CAL. 990-434A:—Rioting with common object of theft.

28 CAL. 10-435B:—See.

25 CAL. 416-383D:—Removing a thing with the object of causing trouble to the owner is not theft.

28 CAL. 339-438D:—See.

22 MAD. 151-401B:—Harvesting crops under attachment.

23 ALL. 306 462F:—Theft from a Railway Van.

25 ALL. 129-494E:—Human body not capable of being the object of theft.

27 MAD. 551 521C:—See.

Sections 383 & 387.

27 CAL. 925 432C:—Money lent to be extorted.

Sections 392, 411.

26 ALL 372 529 E:—See.

Sections 392, 394, 395 & 397.

3 O.C. 263 507B:—Dacoity—Grievous hurt.

Section 395.

1 O.C. 1-504 C:—Presumption of dacoity—Possession of stolen property.

Section 396.

1 O.C. 84-505 B:—Dacoity.

Section 397.

28 ALL. 404 530B:—Dacoity with deadly weapons.

21 ALL. 263-458 A:—See.

Sections 395 398.

23 ALL. 78-461 B:—Attempt to commit dacoity—Use of arms in endeavouring to effect escape.

25 BOM. 45-471 E:—Evidence—Dying declaration.

25 BOM. 712-475 C:—Dacoity—

PENAL CODE—[Contd].

Previous conviction—Sentence.

26 MAD. 467 487 E:—Charges of dacoity and receiving stolen property.

Sections 394, 401.

27 CAL. 139-421A:—Evidence of bad character.

21 ALL. 263-458A:—Dacoity—Commission of grievous hurt in the course of a dacoity.

27 CAL 139-421A:—Evidence of bad character.

Section 402.

23 ALL. 124-462B:—Assembling for the purpose of committing dacoity—Evidence.

Section 403.

22 MAD. 151-401 B:—Harvesting crops under attachment.

Section 405.

27 ALL. 28-925B—See.

27 ALL. 260-521C:—See.

29 BOM. 449-549A:—See.

Sections 403 & 409.

22 MAD. 151-401 B:—Harvesting crops after attachment, criminal misappropriation.

27 ALL. 69-592 C:—See.

Section 406.

24 ALL. 254-464C:—Criminal breach of trust.

28 CAL. 362-439C:—Criminal breach of trust.

Section 407.

28 CAL. 7-435 A:—See.

Section 408.

27 CAL. 461-426 A:—See.

29 CAL. 489-450B:—See.

4 O.C. 376-509A:—Criminal breach of trust.

3 O.C. 55-510B:—See.

31 CAL. 928-556D:—Criminal breach of trust.

PENAL CODE—[Contd].

Section 411.

23 ALL. 266-462E:—Thief arrested by a private person whilst in possession of stolen property.

28 CAL. 7-435A:—See.

28 CAL. 10-435B:—See.

28 CAL. 104-436B:—See.

29 CAL. 387-448D:—See.

28 ALL. 313-529B:—See.

Section 412.

22 ALL. 445-460 F:—See.

Section 414 & 109.

28 CAL. 104-436B:—See.

Section 417.

25 MAD. 726-480C:—Attempting to cheat and forgery.

30 CAL. 822-500C:—Cheating.

27 ALL. 302-523E:—See.

Section 420.

29 ALL. 141-533A:—See.

Section 422.

28 CAL. 314-438C:—Dishonestly or fraudulently preventing debt being available for creditors.

Section 423.

25 ALL. 31-494B:—False statement of price in a sale deed made with the view of defeating the claims of pre-emptors.

Section 424.

22 MAD. 151-401B:—Harvesting crops under attachment.

25 MAD. 729-480D:—Dishonest removal of property to avoid distraint.

26 MAD. 481-489C:—Dishonest removal by tenants of crops.

Section 426.

24 ALL. 155-464B:—Mischief—Willful pollution of food served at a caste-dinner.

27 CAL. 658-428B:—See.

28 ALL. 201-527I:—See.

PENAL CODE—[Contd].

Section 434.

30 CAL. 1081-592A:—Land mark.

Section 441.

26 BOM. 558-477B:—Entry into a house with intent to annoy.

26 ALL. 194-591A:—See.

Section 448.

26 BOM. 558-477B:—House-trespass—Intent to annoy.

30 CAL. 288-454A:—See.

Section 456.

29 ALL. 46-532D:—See.

Section 457.

25 ALL. 82-461E:—House trespass by night with alleged intention to commit adultery.

28 CAL. 681-443A:—See.

Section 465.

28 ALL. 358-529D:—See.

Sections 466 & 471.

23 ALL. 84-461F:—Forgery—Using as genuine a forged document.

30 CAL. 822-500C:—Forging a registration endorsement.

28 CAL. 434-440D:—See.

28 ALL. 402-530A:—See.

Section 467.

30 CAL. 822-500C:—See.

27 CAL. 820-430C:—See.

Section 468.

27 CAL. 820-430C:—See.

25 MAD. 726-480C:—Attempting to cheat and forge.

30 CAL. 822-500C:—See.

30 CAL. 905-500D:—See.

5 O. C. 232-511B:—Forgery—Forged certificate, using for purposes of obtaining employment.

Section 471.

4 O. C. 96-507E:—See.

5 O. C. 232-511B:—Forgery—Forged certificate using for purposes of obtaining

PENAL CODE—[Contd].

employment.

27 CAL. 820-430C:—Forgery—Revision.

28 CAL. 434-440D:—See.

22 ALL. 449-458D:—See.

31 CAL. 1053-558A:—See.

28 ALL. 402-539A:—See.

Section. 478.

26 BOM. 289-476B:—Trade Mark—Trade description—Title of a book—Unauthorized publication.

Section 482.

22 MAD. 488-402A:—Use of counterfeit trade-mark—Prosecution after one year from first discovery of offence.

26 BOM. 289-476B:—Trade-mark Trade-description—Unauthorized publication.

31 CAL. 411-503A:—Trade-mark—Selling goods with a counterfeit trade-mark.

Section 485.

27 CAL. 776-429B:—Trade-mark, user of, and property in—Proof of.

Section 486.

25 CAL. 632-387C:—Goods of counterfeit trade mark not intended to be sold within jurisdiction.

22 MAD. 488-402A:—Offence of using counterfeit trade-mark.

28 CAL. 797-443C:—See.

26 CAL. 432-416A:—Selling books with counterfeit property mark.

27 CAL. 776-429B:—A mark to be a trade mark must be one used for denoting that the goods are the manufacture or merchandise of a particular person.

31 CAL. 411-503A:—Trade mark—Selling goods with a counterfeit trade mark.

Section 489 (c).

29 CAL. 387-446D:—See.

Section 493.

24 CAL. 413-456E:—See.

PENAL CODE—[Contd].

Section 494.

26 CAL. 336-416B:—Complaint by the husband is cognizable.

25 ALL. 209-495C:—See.

Section 497.

29 CAL. 415-448C:—See.

Section 498.

20 ALL. 166-371D:—The Court should require a satisfactory evidence of the marriage.

25 ALL. 209-495C:—Complaint.

26 MAD. 463-487B:—Enticing away a woman—Charge of abetment against a woman enticed—Validity.

3 O. C. 312-507B:—Enticing away a married woman—Evidence of marriage.

Sections 499 & 500.

25 ALL. 534-497A:—See.

22 ALL. 234-460B:—Defamation—statement made in good faith for the protection of the interest of the person making it.

27 CAL. 262-422D:—Statements made by persons as witnesses.

25 BOM. 151-477C:—Defamation of wife—Complaint by husband—Aggrieved party.

26 MAD. 43-482B:—Defamation of Subordinate officers of municipality—Complaint by President maintain ability.

26 MAD. 446-487C:—Defamation—True statement that the complainant had been convicted of theft and sent to jail.

24 CAL. 63-435C:—Defamation—Proof necessary in charge of defamation.

31 BOM. 293-586D:—See.

Section 500.

3 O. C. 80-506C:—Defamation—Privileged statement.

32 CAL. 756-562D:—See.

Sections 503 & 508.

25 BOM. 684-359E:—Threatening to obtain dismissal of a Police constable.

PENAL CODE—[Conld].**30 CAL. 418-453B:—See.***Section 504.***24 ALL. 153-464B:—Insult.***Section 511.***29 ALL. 143-370E:—See.****30 CAL. 822-500C:—See.****23 ALL. 78-461B:—Attempt to commit dacoity—Use of arms in endeavouring to effect escape.****25 ALL. 75-466C:—Fabricating false evidence—Attempt to commit forgery.****28 CAL. 314-438C:—Attempt to prevent dishonestly or fraudulently a debt being available for creditors.****25 MAD. 726-480C:—Attempting to cheat and forge.***Section 525***27 CAL. 566-427A:—Rioting, acquittal of—Conviction of grievous hurt—Constructive guilt.****Penal Servitude.****19 MAD. 483-356A:—Murder—Sentence of penal servitude.****Perjury.****26 BOM. 479-535C:—See.****Pleader.****18 ALL. 174-362D:—The Vakil was not entitled to question the propriety in law or in fact of the conviction, but was allowed to show that his conduct in the matter was not such as to render him an unfit person to practise.****22 ALL. 49-458D:—The High Court's decision was held final by the Privy Council.****Police Diary.****19 ALL. 389-367F:—Police diaries—Right of the accused or his agent to see the Special Diary.****CAL. 1923-371D:—See.****POLICE DIARY—[Conld].****20 MAD. 189-357C:—Occurrence reports—Charge sheets right of an accused to copies of, before trial.****Police Enquiry.****20 MAD. 387-358A:—Reference of cases to the Police for enquiry.****Police Officer.****27 CAL. 457-425D:—Warrant of arrest directed to Police officer.****20 BOM. 394-359A:—Police—Duty of a Police-officer to shelter a person in custody.****24 CAL. 691-380C:—Wrongful entrance and illegal search, liability of of Police officer for.****24 CAL. 324-377E:—Right of search.****24 CAL. 320-377D:—Warrant of arrest—Illegal issue of warrant—Investigation by Police.****18 ALL. 246-363C:—Assault on Police-making arrest—Right of private defence.****20 BOM. 759-359G:—Police custody—Jailor in a Native state.****22 BOM. 233-362 B:—Confession made to a Magistrate of a Native state is admissible.****27 CAL. 366-424 A:—Rescue from custody of a Village chowkidar.****25 CAL. 413 883 C:—Information received from the accused.****Police Report.****28 MAD. 189-357 C:—Occurrence reports—Charge Sheets, right of an accused to copies of, before trial.****Possession.***(1 Cases which a Magistrate can decide.)***27 CAL. 259-422 C:—Dispute regarding right to collect rents.****29 CAL. 724 451 D:—Order by Magistrate**

POSSESSION—[Contd]

ordinate Magistrate restoring possession—Appar.

26 CAL. 188-415E:—Dispute concerning ferry including land and water over which it plia.

24 BOM. 527-471D:—Dispute about right to perform service in a public temple.

25 ALL 537,497B:—See.

2 (Likelihood of breach of the posse.)

24 BOM. 527 471D:—Dispute about right to perform service in a public temple.

24. CAL. 391-378C:—The District Magistrate cannot direct a Sub-Divisional Magistrate to institute proceedings under section 145 Criminal Procedure Code.

27 CAL. 981-433B:—In an order instituting proceedings under section 145 Criminal Procedure Code, it is absolutely necessary that the order should be correct and complete in its terms.

23 CAL. 33-568A.—See.

3 (Parties of proceedings.)

25 CAL. 423-384 B:—A manager in possession can not be a party.

24 CAL. 55-576D:—If it appears necessary that other parties should attend, the Magistrate must initiate a new proceeding.

27 CAL. 892-431A:—Parties concerned do not necessarily mean only the parties who are disputing but include also persons who can claim a right to the disputed property.

4 [Notice to parties.]

24 BOM. 527-471D:—The Magistrate is bound to give notices to all the persons concerned.

5 (Decision of Magistrate.)

26 CAL. 625-417C:—The Magistrate should maintain any order passed by a competent court.

26 MAD. 49-432C:—Order for restora-

POSSESSION—[Contd].

tion of possession of immoveable property.

6 (Nature and effect of decision.)

24 BOM. 527-471D:—The order of a Magistrate should not interfere with the rights of parties as determined by the Civil Court.

7 (Attachment of property.)

27 CAL. 785-430A:—Prohibition to both parties from exercising right of possession.

8 (Right of way, water etc.)

24 BOM. 527-471D:—See.

23 CAL. 557-374B:—Dispute concerning right of fishery.

9 (Dispossession by Criminal force.)

25 CAL. 434-384E:—Restoration of possession of immoveable property.

23 BOM. 491-468D:—Order to restore possession of immoveable property.

27 CAL. 174-422A:—Restoration of possession of property.

10 (Costs.)

24 CAL. 757-380E:—The order for costs should be made at the time of decision before the parties.

Practice.

19 MAD. 209 353A:—The affidavit of the accused was inadmissible when the Magistrate recorded plea of guilty.

24 CAL. 492-379A:—An application to the High Court for sanction to prosecute an approver should be made by motion.

25 CAL. 789-388B:—Right to appear of a party.

24 ALL. 346-465B:—Practice—Revision—Reference by District Magistrate recommending the re-consideration of an order of acquittal passed by a Subordinate Magistrate.

24 ALL. 443-465D:—Application for revision at instance of party who could

PRACTICE—[Conld]

not in his own right be entitled to immediate possession—Practice.

23 BQM. 213-466D:—Accused person calling as witnesses persons charged with him and awaiting a separate trial—Practice.

23 BOM. 493-468C:—Trial of approver for non-fulfilment of the condition on which pardon was offered—Practice.

23 BOM. 696-469B:—Trial by jury of an offence triable with the aid of assessors—Practice.

25 BOM. 170-478B:—Rights of the parties—Practice.

25 BOM. 422-473C:—Withdrawal of prosecution—Practice.

25 BOM. 680-474D:—Appeal on a matter of fact—Practice.

26 BOM. 50-475D:—Consent of the prisoner—Practice.

25 ALL. 128-494D:—The High Court will not ordinarily entertain a reference to have an order of acquittal of an inferior court set aside.

26 ALL. 564-521E:—See.

27 ALL. 468-524C:—See.

32 CAL. 796-564B:—See.

32 CAL. 1069-565E:—See.

32 CAL. 178-559C:—See.

Presidency Magistrate.

33 CAL. 469-561D:—See.

26 CAL. 746-418A:—Presidency Magistrate, proceedings of—Order for further enquiry.

24 CAL. 551-379E:—Magistrate, jurisdiction of—Power of commitment to Sessions Judge.

24 CAL. 528-379D:—Nuisance.

31 CAL. 933-557A:—See.

26 CAL. 746-418A:—Presidency Magistrate, proceedings of—Order for further inquiry.

**PRESIDENCY MAGISTRATE—
[Conld].**

26 CAL. 359-416C:—Presidency Magistrate.

25 CAL. 637-387B:—Presidency Magistrate—Breach of contract.

27 CAL. 131-420A:—See.

27 CAL. 461-426A:—Presidency Magistrate, judgment of—Sentence of imprisonment.

23 BOM. 490-468B:—Appointment of a pleader to act as a Presidency Magistrate.

31 CAL. 1-502B:—A Presidency Magistrate can enquire into a case committed by a Coroner.

Prevention of Cruelty to animals.

24 CAL. 881-381A:—Cruelty to animals—Crane.

20 ALL. 186-377E:—Meaning of the word "permit."

Previous Conviction.

31 CAL. 1007-557C:—Joint trial.

Prisoner.

23 CAL. 493-373B:—"Accused" meaning of—Right to be heard.

21 ALL. 107-456C:—See.

20 MAD. 189-367C:—Right to inspect and have copies of occurrence reports.

19 ALL. 390-367F:—Right of the accused or his agent to see the Special Diary.

23 BOM. 493-468C:—Pardon tendered to one of the accused.

27 CAL. 137-420C:—Prosecution for giving false evidence—Sanction of High Court.

20 ALL. 529-398E:—Pardon by Magistrate enquiring into a criminal case.

20 ALL. 40-369B:—Pardon—Tender

PRISONER—[Contd]

of Pardon by a Magistrate having power.

27 CAL. 295-422 E:—Trial by jury—Duty of Judge—Reference to High Court—Deposition before Committing Magistrate.

26 CAL. 49-400 A:—Statement of accused—Misdirection.

23 BOM 213-466 D:—Accused person calling as witnesses persons charged with him and awaiting a separate trial for same offence.

21 BOM. 495-360 A:—Statement of prisoner made in the course of or after enquiry.

23 MAD. 636-460 C:—Examination of accused before committal—Discretion of Magistrate.

Private Defence.

24 ALL. 298-468 E:—Right of private defence.

24 CAL. 686-380, B:—Rioting—Unlawful assembly—Right of private defence of property.

26 CAL. 674-417 A:—See.

30 CAL. 97-452 E:—See.

19 MAD. 349-354 B:—Resistance to Inspector of Salt searching a house without a warrant but in good faith was held punishable.

29 CAL. 417-448 D:—There is no right of private defence against a public servant acting in good faith and under colour of his office.

20 ALL. 459-398 C:—No question of self defence arises when men are determined to vindicate their supposed rights by unlawful force.

Privy Council Practice of.

22 BOM. 525-466 E:—Refusal of leave to appeal from a conviction and sentence.

Procedure.

6 O. C. 192-515C:—When a Magistrate is transferred after recording a part of the evidence.

26 ALL. 514-521B:—See.

Promissory Note.

4 O. C. 168-508C:—Receiving a promissory note unstamped is not accepting it.

Public Road.

20 MAD. 433-253C:—Encroachment on public High way.

22 ALL. 267-460C:—Order of Magistrate for removal of unlawful obstruction.

Public Nuisance.

32 CAL. 930-564C:—See.

Public Place.

31 CAL. 542-554A:—See.

31 CAL. 910-556C:—See.

29 BOM. 386-543B:—See.

38 CAL 664-562C:—See.

27 ALL. 360-539A:—See.

27 ALL. 294-523A:—See.

Public Servant.

26 CAL. 630-417D:—Detering a public servant from discharge of duty.

29 CAL. 236-445A:—A receiver appointed under the Land Registration Act is not a public servant.

21 BOM. 517-360B:—A Patel is a public servant.

19 MAD. 464-355 B:—Disobedience to an order duly promulgated by a public servant—Illegal order.

28 CAL. 344-439A:—A peon of the Salt Department is a public servant.

PUBLIC SERVANT—[Conld].

21 MAD. 78-369C:—Resistance to attachment of property by a Public servant.

26 CAL. 158-415 C:—A Surveyor employed by the Collector in the Khas Mahal Department is a public servant.

21 ALL. 127-457 B:—The Manager employed under the Court of Wards is a public servant.

30 CAL. 1084 502A:—An arbitrator appointed in a proceeding for possession of immoveable property was not a public servant.

21 MAD. 428-390 E:—A Sanitary Inspector appointed by the Local Board was a public servant.

30 CAL. 285-453F:—See.

28 CAL. 411-440A:—Obstructing a public servant from discharge of his duty.

26 ALL. 542-521D:—See.

61 CAL. 664-554U:—See.

Punishment.

(See Sentences.)

Rape.

29 CAL. 415-448C:—In a committal of accused on charge of rape, that of adultery can not be added where there is no specific complaint for it.

25 CAL. 230-382A:—Misdirection by the Judge—Erroneous verdict owing to misdirection.

Recognizance to keep the peace.

(I Persons out of jurisdiction.)

24 CA7. 244-378A:—Temporary residence within the jurisdiction of the Magistrate makes the accused subject to his order.

23 BOM. 32-397D:—A Magistrate can not call upon a person residing beyond his jurisdiction to give security.

RECOGNIZANCE TO KEEP THE PEACE.—[Conld].

[II when recognizance may be taken.]

25 CAL. 798-388B:—A wrongful act likely to occasion a breach of the peace justifies the order.

25 CAL. 628-386F:—Security to keep the peace on conviction of house-trespass was not taken when the house trespass was committed to have illicit intercourse with the complainant's wife.

26 CAL. 576-517B:—Conviction for being a member of an unlawful assembly is not necessarily a ground for making the order.

27 CAL. 983-433C:—An offence under Section 143 of the Penal Code does not justify the order.

25 CAL. 559-386C:—A dispute likely to cause a breach of the peace concerning land does not justify the order.

(III Forfeiture of recognizance.)

25 CAL. 440-385A:—The mere fact of the person for whom another stands surety being convicted of the breach of the peace is not sufficient to make the surety-bond forfeited.

Reference to High Court.

25 CAL. 555-386 A:—Reference to be made when necessary for ends of justice.

23 BOM. 696-469 B:—In a trial by jury of an offence triable with the aid of assessors, reference can be made.

27 CAL. 295-422 E:—In making a reference, Judge is limited to the evidence which was before the jury.

24 ALL. 346-465 B: Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.

Religion.

Offences relating to.

18 ALL. 295-364C:—Trespass upon and ploughing up a burial ground is an offence.

Remand.

32 CAL. 1069-565E:—See.

Reply.

- 31 CAL. 1050-557D:--See.
30 BOM. 421-551C:--See.

Retrial.

25 CAL. 425-384C:--Jurisdiction of District Magistrate to order further inquiry.

20 ALL. 339-372A:--Order to the prejudice of an accused person--Order for further enquiry.

21 ALL. 107-456C:--Power to order further inquiry--Security for good behaviour.

27 CAL. 658-428B:--Accused, conviction of--Further inquiry.

27 CAL. 662-428D:--Proceedings for taking security for good behaviour--Discharge of person called upon.

25 CAL. 711-387 D:--Power of Appellate Court to deal with the case--Misdirection.

26 MAD. 41-482A:--See.

29 CAL. 412-448B:--Conviction by District Magistrate for an offence exclusively triable by the Sessions Court is illegal and a retrial should be ordered.

Review.

23 BOM. 50-397E:--Power of Sessions Judge to revoke his order in proceedings taken to revoke sanction.

22 BOM. 949-396D:--Power of revision in Criminal cases--Revision.

27 ALL. 92-592D:--See.

Revision.

(1 General Rules.)

25 CAL. 233-382B:--Power of interference by the High Court--Test as to whether a case is of an exceptional nature.

26 CAL. 786-418C:--Interference in a pending case is not justifiable unless there is some manifest and patent injustice apparent on the fact of the proceeding.

REVISION--[Contd.]

4 O. C. 119-508A:--Application for revision to District Magistrate after its rejection by the Sessions Judge was held entertainable.

20 BOM. 543-359D:--The High Court can interfere with an interlocutory order of a Subordinate Court.

19 MAD. 238-353B:--The High Court refused to revise proceedings under the Cattle Trespass Act.

26 CAL. 188-415E:--Power of Local Legislature to interfere.

27 CAL. 820-430C:--The High Court has discretion at the hearing of a rule to consider matters in respect of which the rule was not granted.

5 O. C. 1-509B:--High Court's power of revision in cases under Sec. 145 Criminal Procedure Code.

24 ALL. 346-465B:--Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.

24 ALL. 443-465D:--Application for revision at instance of party who could not in his own right be entitled to immediate possession.

28 ALL. 554-593A:--See.

(11 Revival of complaint and Retrial.)

27 CAL. 126-419D:--The High Court has power to revise order reviving a complaint after discharge.

(III Miscellaneous.)

21 MAD. 124-389F:--The High Court has power to revoke an order of a Subordinate Court granting sanction for prosecution.

26 CAL. 869-419B:--The High Court can revise an order as to sanction.

24 BOM. 527-471D:--The High Court can interfere when the Magistrate exceeds his jurisdiction.

26 CAL. 746-418A:--The High Court can revise a Presidency Magistrate's proceedings.

27 CAL. 131-420A:--The High Court did not interfere with the Presidency Magistrate's proceedings.

REVISION—[Contd].

- 28 BOM. 535-545D:—See.
 28 BOM. 479-545C:—Property.
 32 CAL. 948-565B:—Security to keep the peace.
 27 ALL. 296-523B:—See.
 27 ALL. 359-523F:—See.
 27 ALL. 397-524A:—See.

Revival of Proceedings:

- 28 MAD. 255-536A:—Complaint dismissed, absence of complaint.
 28 MAD. 310-537B:—See.

Right of private defence.

- 10 O. C. 196-583D:—See.

Rioting.

- 26 CAL. 680-417D:—Public servant acting under warrant of attachment.
 24 CAL. 429-378 E:—Magistrate—power of commitment to Sessions Judge.
 26 MAD. 554-489D:—Wantonly giving provocation to cause riot and disturb a religious procession on a high way.
 24 ALL. 298-464E:—Riot—Right of private defence.
 28 CAL. 504-441B:—Liability of owner or occupier of land on which riot takes place.
 24 CAL. 686-380B:—Causing grievous hurt in furtherance of a common object.
 30 CAL. 288-451A:—See.
 4 O. C. 418-580A:—See.
 33 CAL. 295-570B:—See.

Sanction for Prosecution.

(I Where sanction necessary.)

- 32 CAL. 469-561D:—See.
 5 O. C. 318-579D:—See.
 27 ALL. 296-523B:—See.
 28 ALL. 142-527B:—See.
 — 28 ALL. 554-543A:—See.
 33 CAL. 193-569B:—See.
 26 CAL. 869-419B:—A pleader applied to the Chief Presidency Magistrate

SANCTION FOR PROSECUTION—

[Contd].

for sanction to prosecute an Honorary Magistrate for using insulting language in a trial. Held, no sanction was necessary.

- 26 MAD. 180-489B:—See.
 20 MAD. 8-356D:—Sanction is not necessary for abetment of offence.

(II Under Criminal Procedure Code Section 195.)

26 CAL. 359-416C:—In abetment for instigating a person to give false evidence in a divorce proceeding, sanction to prosecute was necessary.

26 MAD. 193-485 E:—Failure to decide that a *prima facie* case had been made out.

26 CAL. 786-418C:—No sanction is necessary to trying an offence under Section 193 of the Penal Code when the false evidence is fabricated in an investigation by the Police.

30 CAL. 415-455A:—See.

27 CAL. 137-420C:—In a prosecution for the offence of giving false evidence by a person who has accepted pardon, sanction of the High Court is necessary.

6 O. C. 1-514A:—Prosecution for making a false charge.

22 BOM. 936-396C:—For a charge to give evidence in a departmental enquiry, no sanction is necessary.

30 CAL. 905-500D:—See.

25 ALL. 234-495D:—See.

26 MAD. 656-491B:—See.

26 MAD. 592-490A:—Notice to the accused is a necessity.

31 CAL. 664-551C:—See.

31 CAL. 811-356A:—See.

23 MAD. 540-405 C:—A Village Magistrate having been apprised of a disturbance, forcibly separated the combatants. In a charge against him for causing hurt, no sanction is necessary.

(III Notice of sanction.)

18 ALL. 358-364B:—Sanction to pro-

SANCTION FOR PROSECUTION—

[Contd]

secute—Notice to show cause not a necessary preliminary.

23 MAD. 210-404A:—The person sought to be prosecuted is to be given an opportunity to be heard.

✓ 5 O. C. 164-510C:—Notice to accused before sanction for prosecution is necessary.

25 BOM. 90-472B:—Sanction to prosecute—Trial for more than one offence.
(*IV Nature and sufficiency of*

Sanction.)

18 ALL. 203-362E:—An application for sanction for prosecution for purgery or forgery must indicate precisely the document or set forth in detail the statements alleged to be false.

23 MAD. 210-404A:—The Court granting a sanction should satisfy itself as to a *prima facie* case.

25 MAD. 671-480B:—The offender should be named.

28 CAL. 217-437A:—See.

✓ 18 ALL. 218-363A:—No sanction can be granted without an application for it.

26 MAD. 190-485C:—The starting point is the date of original sanction for the computation of the period of six months.

✓ 27 CAL. 820-430C:—Sanction should be given only on application made by some person who may really desire to complain of the offence.

5 O. C. 240-512A:—Proceedings to sanction for prosecution for making a false charge were found invalid as the requirements of law were not complied with.

18 ALL. 358-364B:—Sanction for purgery was held not bad by reason of no notice having been issued.

22 BOM. 112-361B:—Charge under Section, 124A, Indian Penal Code.

25 MAD. 671-480B: Sanction to prosecute.

SANCTION FOR PROSECUTION—

[Contd]

(*V Power to grant Sanction.*)

27 CAL. 452-425B:—When the sanction was given by the Magistrate on police report, he could hear the appeal.

23 CAL. 532-374A:—Inquiry is a necessary preliminary to the exercise of power to grant sanction.

5 O. C. 46-510A:—The Court can grant sanction for the prosecution of an offence in relation to future proceedings.

20 MAD. 339-357E:—The Court has power to go outside the record and take additional evidence.

19 ALL. 121-366 E:—The District Judge can revoke the sanction granted by an Assistant Collector.

(*VI Revocation of sanction.*)

23 MAD 205-403D:—The power of revoking is only in respect of sanction and not of complaints.

27 MAD. 124-493B:—Power of superior court to revoke sanction after complaint lodged.

23 BOM. 50-397E:—A Sessions Judge having once refused to revoke a sanction cannot set it aside in review.

30 CAL. 394-454C:—See.

27 BOM. 130-478D:—Jurisdiction of Small Cause Court to revoke the sanction.

25 ALL. 126-494C:—See.

26 MAD. 189-485B:—Competency of court to question propriety of sanction.

26 MAD. 139-484D:—See. 32 Bom P.

26 MAD. 116-483B:—See. *In re*

26 MAD. 137-484C:—See. *Jopel Siddi*

Security for good behaviour.

24 ALL. 148-463E:—Power of the District Magistrate to re-open proceedings on the same record after discharge of the persons called upon to show cause by a Magistrate of the First Class.

SECURITY FOR GOOD BEHAVIOUR

[Contl].

27 CAL. 781-429C:—The object of enabling a Magistrate to take security for good behaviour is for the prevention and not for the punishment of offences.

2 O. C. 307-505E:—The order for furnishing security for good behaviour is appealable to the District Magistrate.

29 CAL. 392-447B:—Proceedings instituted by Magistrate on his own knowledge of suspicion.

27 CAL. 993-434C:—A Magistrate can not pass an order against a person not residing within his jurisdiction.

25 A.L.L. 272-496B:—The Magistrate making the order for security can not delegate to another officer the enquiry into the sufficiency of the security tendered but must make the enquiry himself.

27 CAL. 656-428A:—The accused has a right to be heard by a pleader.

25 ALL. 375-498F:—Notice to be given of proceedings before the Judge to the persons requiring to find security.

24 CAL. 155-376E:—No conditions and limitations can be imposed upon persons ordered to give security.

26 ALL. 189-498B:—The fact that a proposed surety has been punished for an offence does not of itself render him unfit.

20 ALL. 206-371G:—The sureties should not be of such a distance as would make it unlikely that they exercise any control over the man for whom they stand surety.

27 CAL. 662-428D:—Further proceedings can be made only on a fresh information against the accused after discharge.

29 CAL. 779-451E:—From habitual offenders.

24 CAL. 155-376E:—A Sessions Judge can not remand a case for further enquiry but must take the evidence himself.

[Contd].

28 A.L.L. 629-531D:—See.

33 CAL. 8-567B:—See.

25 ALL. 131-494F:—Sureties can not be refused on the ground of their relationship to the person required to find security.

6 O. C. 262-516D:—See.

19 A.L.L. 291-367B:—No order can be made transferring the case from a Magistrate's Court after he has acted in the proceedings.

26 MAD. 471-488C:—The Magistrate can not require security for a longer period than that required in the notice.

6 O. C. 199-516A:—Magistrate's discretion, how to be exercised.

23 A.L.L. 780-461C:—Security for good behaviour—Discretion of Court.

30 CAL. 366-454B:—See.

23 ALL. 422-463B:—Security for good behaviour—Term for which imprisonment in default of finding security should be ordered.

24 ALL. 471-466A:—Security for good behaviour—Power of Court to assign geographical limits within which the sureties required must reside.

26 BOM. 418-476C:—Security for good behaviour—Witness—Magistrate—Summons—Refusal to Summon.

29 CAL. 455-449A:—When the surety bond is accepted, by a Subordinate Magistrate the District Magistrate can not cancel it.

26 ALL. 371-520B:—See.

31 CAL. 557-554B:—See.

8 O. C. 245-578D:—See.

27 ALL. 172-522A:—See.

27 ALL. 262-522D:—See.

30 MAD. 182-545A:—See.

Security to keep the Peace.

23 ALL. 202-519B:—See.

32 CAL. 80-559A:—See.

SECURITY TO KEEP PEACE—

[Could.]

32 CAL. 966-565A:—See.**9 O. C. 381-382A:—See.**

5 O. C. 313-513A:—Omission to serve the accused with copy of substance of information received by the Magistrate does not vitiate the trial.

31 CAL. 350-302D:—See.

26 ALL. 190-498C:—Evidence as to likelihood of breach of the peace.

25 ALL. 273-496C:—Evidence of general repute can not be made use of.

26 MAD. 469-488A:—No security can be taken unless there is a finding that a breach of the peace had been committed.

30 CAL. 443-455D:—See.**30 CAL. 93-452C:—See.****30 CAL. 101-453A:—See.**

29 CAL. 393-447C:—Order for security is dependent on express finding as to commission of the offence within the section.

29 CAL. 389-447A:—See.**Sentence.***(I General.)*

19 MAD. 238-353B:—Sentence under the Cattle Trespass Act—No appeal.

19 ALL. 73-365D:—Compensation for frivolous and vexatious complaint.

23 CAL. 502-373E:—Pronouncing sentence before writing judgment—Irrregularity.

20 MAD. 3-356C:—Sentence of imprisonment in default of payment of maintenance.

25 CAL. 291-383A:—Maintenance—Sentence of imprisonment for default of payment of,

20 ALL. 158-371A:—Order for detention in a Reformatory school,

20 ALL. 159-371B:—Order for detention in Reformatory School,

20 ALL. 160-371C:—Order for detention in a Reformatory School.

21 ALL. 391-458C:—Jurisdiction of High Court to interfere with orders—Interpretation of Statutes.

23 CAL. 975-376A:—Power of the Appellate Court—Altering a finding of acquittal into one of conviction.

SENTENCE.—[Could.]

18 ALL. 301-363D:—Enhancement of sentence—Power of Appellate Court.

24 CAL. 316—377B:—Cross-Examination of witness called by the Court—Enhancement of sentence.

23 BOM. 439-467C:—Powers of Appellate Court to enhance sentence—Sentence—Alteration of sentence.

20 MAD. 444-353D:—A Magistrate in British India can pass a sentence to take effect after the expiration of a sentence in Mysore.

23 BOM. 712-475C:—Whipping—Dacoity—Previous conviction—Sentence.

30 MAD. 103-544F:—See.*(II Cumulative Sentence.)*

23 BOM. 706-469B:—Conviction of several offences at one trial.

(III Imprisonment.)

25 CAL. 557-386B:—Sentences of imprisonment passed for distinct offences to run concurrently is not proper.

22 MAD. 288-401D:—When the offence is punishable with imprisonment or fine, the sentence of imprisonment in default should not exceed one-fourth of the term of imprisonment provided for the offence.

23 BOM. 439-467C:—The Appellate Court can alter a sentence not thereby enhancing it.

27 CAL. 175-422A:—The Appellate Court can alter a sentence not thereby enhancing it.

*(IV Enhancement of sentence.)***26 MAD. 421-486C:—See.****Sessions Judge.***(General.)*

20 MAD. 445-358E:—Criminal trial in Sessions Court—Stopping the trial.

22 MAD. 15-400C:—Verdict of Jury and their opinion as assessors—Confessional statement.

23 BOM. 696-469F:—Trial by jury of an offence triable with the aid of assessors.

27 CAL. 295-422E:—Trial by Jury—Duty of Judge—Reference to High Court.

26 MAD. 592-490A:—The Sessions

SESSIONS JUDGE—[Conld.]

Court can try offenders separately where jointly committed for trial.

(Jurisdiction)

32 CAL. 1069-565E:—See.

23 CAL. 493-373B:—"Accused," meaning of—Right to be heard.

25 CAL. 555-386A:—See.

(Jurisdiction of.)

27 BOM. 644-504A:—The Judge should not omit pointedly to call attention of the jury to matters of prime importance especially if they favour the accused.

(Verdict of Jury.)

27 CAL. 658-428B:—Accused, conviction of—Further inquiry.

18 ALL. 301-363D:—Enhancement of sentence—Power of Appellate Court.

23 BOM. 50-397E:—A Sessions Judge having once refused to revoke a sanction can not set it aside in review.

25 BOM. 543-473D:—Confession of an accused while in custody of the Police—Sessions Judge, duty of.

26 BOM. 50-475D:—Sessions Judge—Trial—Evidence recorded partly by another Judge.

27 BOM. 644-504A:—Sessions Judge—Jury—Summing up—Defective direction.

27 BOM. 626-503E:—See.

22 BOM. 759 894B:—Appeal from a conviction by a Magistrate where accused pleads guilty is allowable as to the amount of punishment awarded.

23 MAD. 205-403D:—The Sessions Judge was held not competent to interfere with a Deputy Magistrate's order sanctioning prosecution.

23 MAD. 225-405D:—The Sessions Judge was held not competent to order a fresh enquiry.

Stay of Proceedings.

23 CAL. 610-374E:—Power of High Court in quashing proceedings before Magistrate pending a civil action.

Stolen property.

I. Offences relating to.)

20 BOM. 348-358H:—A person can not be called on to account for the possession of property unless the court is satisfied that such property may be reasonably stolen or fraudulently obtained.

1 O. C. 1-504C:—The recent possession by the prisoner of stolen property at the dacoity justifies the presumption that the prisoner took part in it.

22 ALL. 445-480F:—Finding stolen property in a joint family house not sufficient evidence of possession of each member for conviction.

II (Disposal of, by the Court.)

22 BOM. 844-395D:—Property produced before a Court should be restored to the previous possessor if no offence has been committed with it.

23 BOM. 494-468D:—Order as to standing crops on land of which possession is ordered to be restored.

25 BOM. 702-475B:—Disposal of stolen property on conviction of the thief.

30 CAL. 690-479D:—An order directing the restoration of property in respect of which no offence had been found to have been committed is not appealable.

29 CAL. 409-447D:—Trial for minor offences by a Magistrate is illegal while a graver offence is disclosed.

21 ALL. 189-437F:—Matters necessary to be stated in the record of a summary trial.

22 MAD. 459-401G:—A Magistrate can try summarily an offence triable summarily after enquiry into a graver charge.

Superintendence of High Court.

26 CAL. 188-415E:—Power of revision by the High Court.

27 CAL. 892-431A:—Land ownership of, dispute as to—Collection of rents—Power of High Court to interfere.

SUPERINTENDENT OF HIGH COURT—[Contd.]

26 CAL. 852-418B:—Power of High Court to revise an order as to sanction.
26 CAL. 126-419D:—High Court's power of revision.

Theft.

27 CAL. 660-420C:—Theft, charge of—Conviction—Appeal Acquittal of theft.

27 CAL. 996-434A:—Conviction of rioting with the common object of theft.

27 CAL. 501-426B:—Bonafide belief as to title shows want of dishonest intention.

26 MAD. 481-439C:—See.

25 CAL. 416-389D:—Removing a thing to put the owner to trouble is not necessarily causing wrongful loss.

22 MAD. 151-401B:—Harvesting crops after attachment is not theft but criminal misappropriation.

23 ALL. 306-462F:—Theft from a Railway van.

25 ALL. 129-494B:—A human body is not capable of being the object of the t

Thumb Mark.

32 CAL. 550-561E:—See.

Trade Mark.

31 CAL. 411-503 A:—Selling goods marked with a counterfeit trade mark.

32 CAL. 969-565D:—See.

Transfer of cases.

1 [General.]

19 ALL. 249-367A:—The High Court can transfer a case to the District Magistrate.

26 MAD. 391-491D:—A District or Sub-Divisional Magistrate can transfer a case of petty theft from the file of a village Magistrate.

22 BOM. 519-492A:—Transfer ought not to be made without notice to the accused.

31 CAL. 350-502D:—See.

30 CAL. 693-500A:—The transfer of a case by a District Magistrate where a Deputy Magistrate was about to frame charges was held improper.

TRANSFER OF CASES.—[Contd.]

25 BOM. 179-473B:—Transfer of a case—Bias of Judge.

3 O. C. 247-507A:—The High Court has power to transfer proceedings from the court of one District Magistrate, to that of another.

26 MAD. 188-485A:—The High Court has jurisdiction to transfer a criminal case about possession of immoveable property.

II (Grounds for transfer.)

23 CAL. 495-373 C:—Reasonable apprehension in the mind of the accused should be considered in transferring a case.

26 MAD. 396-406 B:—The District Magistrate or a Sub-Divisional Magistrate can transfer a petty theft case from the file of a Village Magistrate.

19 ALL. 64-365C:—Grounds upon which transfer may be granted.

25 CAL. 727-387E:—See.

19 ALL. 302-367C:—View of the scene by Magistrate is no ground for transfer.

28 CAL. 297-438A:—Reasonable ground in the mind of the accused of the Magistrate being biased.

31 CAL. 715-555C:—See.

33 CAL. 1183-572C:—See.

Trespass.

26 BOM. 558-473B:—House trespass—Intent to annoy.

Trial.

29 CAL. 385-446C:—Several persons can not be jointly tried unless they committed offences in the same transaction.

29 CAL. 211-414C:—It is the duty of the court to grant a reasonable adjournment and its refusal vitiates the subsequent proceedings.

28 CAL. 104-436 B:—Discharge of accused on ground of mis-joinder by the Sessions Judge.

Unlawful Assembly.

30 CAL. 285-453F:—See.

21 MAD. 249-390B:—Firing on an unlawful assembly—Good faith.

31 CAL. 424-503C:—See.

26 MAD. 249-486A:—An unlawful assembly was held justified as made for private defence and to protect a right.

29 CAL. 214-444D:—Ingredients and proof of.

25 MAD. 624-479 B:—Unlawful assembly was held justified as made for

UNLAWFUL ASSEMBLY—[Could]

defence and to protect a right.

8 O. C. 418-550A:—See.

Verdict of Jury.—(General.)

29 CAL. 128 414 A:—Disagreement of the Judge with the verdict of the Jury.

25 CAL. 710-387D:—Charge to the Jury—Setting aside verdict of the jury—Misdirection—Power of Appellate court to deal with the case.

30 CAL. 485-498E:—A new trial was ordered where the verdict was partial.

26 MAD. 243-485F:—Opinion of Jury of guilt in respect of offence not triable by Jury.

28 BOM. 42-545B:—Jury.

31 CAL. 979-556E:—See.

Viceroy.

32 CAL. 1-585C:—See.

Warrant of Arrest.

20 MAD. 250-377D:—Warrant—Execution outside jurisdiction.

28 CAL. 399-439E:—Wrong description of—Resistance to lawful apprehension.

20 MAD. 457-358F:—Breach of contract, warrant.

5 O. C. 37-509C:—A warrant signed with pencil was found valid.

20 ALL. 124 370C:—Fraudulent breaches of contract by work men—Warrant.

5 O. C. 55 510B:—Warrant of arrest can be issued by the Political Agent of a Native State against a British Indian Subject.

Whipping.

25 BOM. 712 475C:—Whipping—Previous conviction—Sentence.

26 MAD. 465 487D:—The execution of the sentence of whipping only without imprisonment can not be postponed pending an appeal.

Witness.**I (Persons competent or not)**

20 ALL. 426 398A:—Accused persons under trial separately for a substantive offence and for abetment are competent witnesses on each other's behalf.

23 ALL. 90 462A:—Evidence—Witness—Competency of witness of tender years.

WITNESS—[Contd.]

26 BOM. 418 476C:—Witness—Magistrate—Summons—Refusal to summon.

26 ALL. 177 497E:—It is the duty of a Magistrate enquiring into a case triable by the Court of Sessions to summon and examine witnesses asked for by the accused.

II [Summoning witnesses.]

19 ALL. 502-368B:—The accused can have witnesses summoned in his defence after the refusal to give in a list in the Magistrate's court.

25 CAL. 863-399F:—The accused can have witnesses ressumoned and re-heard.

24 CAL. 1320-377 A:—The District Magistrate can not issue a warrant against a witness at a Police Investigation.

23 BOM. 213-466 D:—Witnesses charged with the accused and awaiting a separate trial for the same offence.

III [Examination of witnesses.]

18 ALL. 380-364D:—A Magistrate can examine witnesses named for the defence when the defence is reserved for the Sessions Court.

29 CAL. 48: 450A:—Duty of Police with the fear of witnesses being gained over.

(IV Cross Examination.)

24 CAL. 167 376F:—See.

24 CAL. 284 377B:—See.

29 CAL. 387 446D:—The accused can cross-examine a witness whom he had refused to examine.

20 ALL. 555 370G:—Cross examination by defending Counsel was disallowed when the witness was called by the defence.

27 CAL. 370 424C:—Cross examination of prosecution witness before charge.

25 BOM. 168 473A:—See.

25 BOM. 422 473C:—The accused can get an adjournment for the cross-examination of prosecution witnesses.

32 CAL. 1093 566C:—See.

Wrongful Confinement.

30 MAD. 179 544E:—See.

10 O. C. 132 583A:—See.

Wrongful gain and loss.

32 CAL. 50 569A:—See.



